

SPEECHES AND  
DOCUMENTS

ON THE BRITISH DOMINIONS

1918-1931



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# SPEECHES AND DOCUMENTS

ON THE BRITISH DOMINIONS

1918-1931

(12)

FROM SELF-GOVERNMENT TO  
NATIONAL SOVEREIGNTY

EDITED WITH AN INTRODUCTION AND NOTES BY

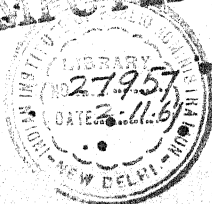
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## INTRODUCTION

### *I. The Progress of Events*

THE period covered in this volume marks a definite change in the status of the British Dominions. They had attained before the outbreak of the war of 1914-18 almost unfettered autonomy in internal affairs, in foreign relations they were entitled to have their interests consulted to the fullest degree by the Imperial government, and in matters of foreign commerce they enjoyed almost unlimited freedom of action. But only in a minor degree had their international status received a tentative recognition in the separate representation accorded to them at the Conferences on Radiotelegraphy and Merchant Shipping in 1912 and 1914. Even when preparations were being made for The Hague Peace Conference, which was to be rendered impossible by the outbreak of war, no Dominion government thought fit to ask for separate representation at the Conference, though the British government was prepared to consult them as to the line of action to be supported by the representatives of the United Kingdom.

It is impossible to say how soon Dominion claims to international status would have developed but for the events of the war. The Dominions realized probably for the first time how gravely international issues affected their vital interests, and how entirely the control of the issues of war and peace had been vested in the hands of the British government. It was inevitable that they should feel that their sacrifices in blood and treasure should be required

by full acceptance of a new place in the councils of the nations. No doubt the idea was not easily grasped. The British government proved early to be sympathetic, and there was at least as much hesitation in the Dominions as in the United Kingdom as to the wisdom of the new step. Sir Robert Borden indeed carried his Cabinet with him in his great stand for the special representation of the Dominions at the Peace Conference, but Mr. Hughes had to face the grave doubts and hesitations of his colleagues, whom nothing save his vivid personality could have induced to accept his policy in this regard. With the aid of General Smuts they achieved their desire; the hesitations of foreign powers were overruled, and the Dominions attained distinct representation at the Peace Conference, and after a further struggle with international difficulties were secured distinct membership of the League of Nations. There was, however, another side to the picture; Sir R. Borden was in no way minded to see Canada relegated to the position of a minor allied power; he successfully secured for the Dominions the right not merely to their distinctive position, but also to share in the control of the foreign policy of the United Kingdom. For the purpose of the Peace Conference the War Cabinet system, which he has so brilliantly described, was transformed into the British Empire Peace Delegation at Paris. The doctrine of unity in plurality was thus definitely announced. To Sir R. Borden, again, is due the decision that the distinct status of the Dominions should be attested in the mode of signature of the treaties of peace, and that the treaties should not be ratified by the Crown until they had been approved by the Parliaments of the

Dominions no less than that of the United Kingdom. He secured also the formal admission that under the Covenant of the League, membership of the Council was not confined to the British Empire permanent seat, but that a Dominion might be elected to one of the seats held for a period. His foresight was duly rewarded in 1927, when Canada received the honour of election, yielding place in 1930 to the Irish Free State, a precedent suggesting that a British Dominion may normally look in due course to this honour.

The achievement of international status within the League of Nations served in some degree as a reply to the urgent demands of the Nationalists in the Union of South Africa for independence, a claim which they had vainly urged on the British Prime Minister during the Peace Conference. General Smuts was able to assert that the Union had thus attained a position of sovereign authority which rendered the claim for the right to secede meaningless. But the argument was pressed that the legal supremacy of the Imperial Parliament was incompatible with this claim, and at the Imperial Conference of 1921 the question of constitutional revision, as contemplated by the Imperial Conference of 1917, was raised and discussed. Mr. Hughes in a characteristic utterance denounced the project, asserting in the true vein of British constitutionalism that Australia had no more worlds to conquer, and that nothing was in practice to be gained by attempts to define, a position which General Smuts was unable to shake. But he was more successful in the field of external relations; thanks to his intervention, the representation of the Empire at the Washington Conference of 1921-2,



which was the natural sequence to the discussion at the Imperial Conference of the vital issue of the renewal of the Japanese alliance, was finally arranged on the model he advocated. Thus each Dominion signed the treaty by its own representative, though, as was inevitable, it was necessary that the Dominions and the United Kingdom should agree on a common policy, if the desired results as to limitation of naval construction and resettlement of relations in the Pacific were to be obtained. By a new and wider compact, in which France and the United States joined, the four powers were assured of the safety of their insular possessions in the Pacific, and the Anglo-Japanese Treaty, which had rendered such brilliant services to the Empire, could safely be allowed to be superseded by the new compact. At the same time notable results were attained in limitation of capital ships and in restriction of the creation of fortified bases in the Pacific.

In the meantime the success of the Empire abroad had been marred by the relentless civil war waged in Ireland. At last, through the exhaustion of the combatants, it seemed possible to apply to the situation the remedy of the concession of Dominion status, subject to certain safeguards, which were deemed necessary owing to the close proximity of Ireland to the rest of the United Kingdom. By a complete innovation the arrangement achieved at London was expressed in the form of articles of agreement for a treaty between Great Britain and Ireland, and the measure was finally accepted in the Irish Dáil, which had claimed to be the legislature of an independent state, against the plea of the President of the Republic. The reasons

for the acceptance were ably set out by Mr. Griffith in the Dáil and by Mr. Lloyd George in the House of Commons. The treaty gave the Free State the right to enact its own constitution, subject to the treaty; the discussions of the measure revealed clearly how far the Irish delegates and their supporters believed they had achieved virtual independence as compared with the more moderate views held by legal authorities in England, such as Sir John Simon and the Attorney-General. In one matter only were the hopes of the Free State disappointed. The British government refused to coerce Northern Ireland, which was set up as a distinct government by the Government of Ireland Act, 1920, to enter the Free State, though it was thought that the delimitation of the boundary provided for in the treaty of 1921 might result in Northern Ireland being so weakened in area and population as to be willing to throw in its lot with the Free State. In point of fact the boundary commission when actually at work seemed likely to deliver a judgement in favour of the north, and to obviate the grave political consequences of such a finding the British government hastily concluded in 1925 a fresh agreement under which the boundary was left intact, and the Irish Free State was somewhat illogically rewarded by being excused any share of the burden of the national debt. The assent of Northern Ireland was at the same time purchased by pecuniary grants, and by the transfer to the Parliament of the powers which originally were to be vested in a Council of Ireland representative of the two areas.

The existence of the Free State was destined to have a very marked effect on the progress of the

movement towards autonomy. The orthodox view adopted in the Free State was that the only link between the State and the United Kingdom was that provided by the treaty, and that any authority beyond its terms must be wholly denied. This attitude was supported in essential respects by the Nationalist government which attained power in the Union in 1924. General Hertzog worked consistently to realize in law as well as in fact the complete autonomy and sovereign independence of the Union, whether in internal or external affairs, claiming the right to remain neutral in British wars, and to secede at pleasure. It is significant of the general reluctance of the Imperial Conference to discuss abstract issues which do not admit of effective solutions, that these latter issues have not directly formed subjects of formal pronouncements, though indirectly both claims have received in effect negative replies. The Conference has reiterated its demand for co-operation on a basis of equality, and it has claimed that all the Parliaments of the Dominions, as well as that of the United Kingdom, must concur in any change in the succession to the throne, a doctrine incompatible with the right of any member of the Empire to leave it at pleasure.

But important as has been the influence of these late comers to the table of Empire, as Mr. Hughes has styled them, the greatest weight in the movement for constitutional change has necessarily been exerted by the oldest and most powerful of the Dominions. It was Sir R. Borden who was the protagonist in the demand for the separate position of the Dominions in the League of Nations, and it was Mr. Mackenzie King who in his ministry from

1921 worked steadily towards the assertion of the right of Canada to exercise the treaty power. Sir R. Borden had indeed secured from the British government, in 1920 acceptance of the principle that Canada might be represented at Washington by a Minister Plenipotentiary who would be the direct servant of the Canadian government, though working in close harmony with the British Ambassador. But no action had been taken on this concession, and Mr. King at first refrained from pressing the question. On the other hand, he secured a vital result in the signature by a Canadian Minister alone of the Halibut Fishery Treaty of 1923 with the United States. Hitherto under the ruling of Sir E. Grey in 1907, while treaties might be negotiated by Canadian Ministers, duly authorized by the Crown on the advice of the Canadian and British governments, signature had to be carried out jointly with the British diplomatic representative in the country with which the treaty was negotiated. The new claim successfully insisted on formed the subject of the discussion at the Imperial Conference of 1923 regarding the making of treaties, which laid down the essential principle that each part of the Empire could have treaties made by its own nominees, but that there must be communication in advance to other parts of the Empire of the intention to negotiate so that an opportunity might be presented for joint action or at least consultation, while it was made clear that no part of the Empire should purport to bind other parts. These principles applied to the Halibut Fishery Treaty made it plain that its references to nationals had no application to any but Canadian nationals, and that no attempt was made, as the United

States Senate at first suggested, to bind British subjects in general by a Canadian treaty. Had this been intended, it would have been necessary that a British envoy also should have signed the treaty.

Unfortunately another issue arose which could not so easily be adjusted. For international reasons, possibly not wholly adequate, the British government in its dealings with Turkey did not obtain the normal Dominion separate representation at the Lausanne Conference, and when, on the signature of the Treaty of Lausanne, the British government assumed that the Canadian government would, as in the case of the other Peace Treaties, bring the new convention before the Canadian Parliament for approval prior to ratification, the Canadian government refused to take this step. It admitted that the royal ratification would bind Canada, but it claimed that, as it had not been allowed to participate in the making of the compact, it was free, if war should arise out of the clauses dealing with the Straits, to decide precisely how far it would lend aid to the United Kingdom in making good the King's obligations under the treaty. Mr. Mackenzie King's exposition of the true doctrine of inter-imperial relations is of special weight and of convincing authority.

While thus the true theory of inter-imperial relations in external affairs was being developed by the Prime Minister of Canada, and the British government in 1924-5 was exploring avenues to secure more effective relations on these issues with the Dominions, a domestic issue arose in Canada which had a profound effect on the course of internal development. When the Canadian Parliament was discussing a motion of censure on the

government arising out of irregularities in the customs department, the Prime Minister, who had satisfied himself that there was no possibility of effective legislation with the existing state of parties in the House, asked the Governor-General for a dissolution of Parliament. To his surprise, and contrary to the whole course of action since the formation of the Dominion in 1867, his request was refused; and a new government under Mr. Meighen was installed in office, on his resignation in consequence of the refusal of his advice. Unfortunately the new ministry was irregularly constituted; in consequence of its desire to avoid immediate defeat in the Commons, only the Prime Minister himself formally accepted office and thus vacated his seat, re-election being still required in Canada on acceptance of ministerial office, the other members of the new government being merely appointed to acting posts. Even so the Commons voted disapproval of the new government, and was hastily and informally prorogued with a view to a dissolution. The country in the meanwhile was governed by a ministry which had never possessed a majority in the Commons, and which had to expend millions of money without legal sanction. The constitutional issue was hotly debated during the electoral struggle, and was specially pressed by Mr. Mackenzie King in an important speech at Ottawa on July 23, 1926. The result of the election was a decisive repudiation of the new ministry and the return of Mr. King to office.

It was inevitable that in these circumstances Mr. Mackenzie King should approach the Conference of 1926 with the determination to secure greater regularity in treaty procedure and an

effective declaration of the true functions of the Governor-General. The demand could expect hearty support from the Irish Free State, which informally but effectively had already secured acceptance of its right to choose the representative of the Crown in the selection of Mr. Timothy Healy as the first occupant of that high office, and from the Union, where General Hertzog had pledged himself to secure the fullest recognition of the complete equality of the Union with the United Kingdom in regard to status and its recognition as a sovereign international state. Nor was the British government unwilling to face the issue. Forced by its proximity to Europe to recognize emergencies which meant little to Ottawa under the aegis of the Monroe doctrine or to remote Australia or Pretoria, the United Kingdom had committed itself to the Locarno Pact, a measure of great wisdom, as Sir Austen Chamberlain, whose Garter testified to his sovereign's gratitude, had no difficulty in proving to the House of Commons. But for sufficient cause the Dominions could not take part in the negotiations and had, therefore, to be exempted from responsibility unless their governments chose to accept it. This followed the precedent of the abortive compact of 1919 under which the United States should have joined with France and the British Empire in a treaty of guarantee, but which fell to the ground with the refusal of the Senate to homologate the peace settlement, leaving the gap to be filled at Locarno. It was, however, felt in the Dominions, and recognized in the United Kingdom that this mode of procedure was awkward. The King, on the one hand, appeared as contracting for the whole

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Empire under the unqualified formula employed, so that he was compelled to include a provision exempting the Dominions from the obligations naturally imposed. It was remembered that in 1919 Sir R. Borden had proposed that treaties should be signed specifically for the United Kingdom and its dependencies, as well as for each Dominion, and this doctrine was successfully revived, and adopted by the Imperial Conference of 1926.

The Conference resulted in an historic document, the Report of the Inter-Imperial Relations Committee, presided over by the Earl of Balfour, whose keen and subtle dialectic is manifested to the full in the dexterous phraseology which was devised to meet the demands of the spokesmen of Canada, the Free State, and the Union without offending the more moderate and reserved views of the Commonwealth, New Zealand, and Newfoundland. The attitude of these Dominions was naturally more conservative than that of Canada, where the French Minister of Justice had appeared as a strong advocate of national status, or of the Free State and the Union with their predominantly Irish and Dutch population and their deep sense of the wrongs inflicted by British annexation. Moreover, while Canada was secure in the support of the United States against foreign attack, and the Free State and the Union felt security on the score of geographical position and the protection of the League Covenant, it was natural for Australia and New Zealand to maintain close connexion with the power whose fleet furnished them with the necessary assurance of the power to develop in safety their own civilization and modes of life and to maintain



absolute control of their immigration policy, whether as against Italy, India, China, or Japan.

The Report, while it did much to clear up the position as regards foreign relations and resulted in the immediate decision of Canada and the Union of South Africa to vie with the Free State in setting up legations abroad, left to an Expert Conference the duty of seeking to propose amendments of the existing law of the Constitution in order to bring it into harmony with the new status acknowledged to belong to the Dominions. The Conference in question met in 1929, and, as Mr. Coates, former Prime Minister of New Zealand, has pointed out, it proceeded to interpret its reference in the most generous spirit. All that had been suggested by way of limitation by the Conference, though doubtless it was influential in securing assent then, was cast aside, and the fullest measure of autonomy was readily agreed to. The proposals in turn were discussed and in substance homologated by the Imperial Conference of 1930, and effect was given to them in the Statute of Westminster, to which operation is given from December 11, 1931.

It cannot be said that the measure was received with complete approval in the Dominions where, under the procedure adopted, its enactment was preceded by resolutions of the Parliaments asking for its enactment at Westminster, and little enthusiasm marked its passage in the Imperial Parliament. The root of this attitude may be traced to the feeling, which was very forcibly voiced by Mr. Hughes in the Commonwealth, that no useful purpose was served by attempting to define by legislation the powers of the Dominions. It was felt also that the statute was merely negative; it

cut away ancient principles of unity, and accorded nothing to those who recognized the fullest autonomy, but believed that that autonomy should be an incentive to closer co-operation in the vital task of affording the restoration of prosperity to a perplexed and anxious world. Nevertheless the essential feeling in the United Kingdom was deference to Dominion wishes, and a clear recognition that the statute itself merely gave legal validity to an autonomy which had for many years existed in practice. It must be remembered that the English mind, with its preference for constitutional conventions, is opposed to the precise ideas of continental jurisprudence which appeal to French and Dutch legal acumen and to the acute Celtic intellect. If in fact the statute clears the way for a most cordial Imperial co-operation, it will have served a most useful purpose, for the needs of the world situation demand the most effective application of the united efforts of the subjects of the King Emperor.

## II. *The Present Constitution of the Empire*

It would be idle to pretend that the existing constitution of the Empire, or the British Commonwealth of Nations as the Irish Free State prefers to call it, is easily intelligible or in any degree logical, and the task of summarizing its leading features is hampered by the existence of acute divergence of views on vital issues. It has been endeavoured in the extracts given to indicate opposing views, and a brief summary of salient features is all that here is in place.

(1) The Dominions and the United Kingdom alike enjoy systems of full responsible government,

based in the case of the Dominions on the British model, which is the exemplar for the rest of the Empire. But there are certain differences between the two cases based on physical facts. The King is personally present in the United Kingdom, and this prevents his presence normally in the Dominions, where he must be represented by a Governor-General. But, while the widest delegation of the power of the Crown is made to the Governor in all matters of internal concern, he is not yet granted the most important of external prerogatives, the right to declare war, proclaim neutrality or make peace, or to exercise the treaty power. In these matters the King himself still acts for the Dominions, a fact which inevitably complicates the operation of Dominion autonomy.

(2) While the general principle prevails that in matters within his sphere the Governor-General is a representative of the King and acts on the principles affecting the Crown in its relation with the ministry and Parliament in the United Kingdom, there is difficulty in making this doctrine fully effective. This arises at once from the essential distinction between the royal position as hereditary and enjoyed for life, and the temporary tenure of the Governor-General and his selection, especially if, as in the case of the Commonwealth of Australia in 1931, the appointment is made by a Dominion government on political grounds and is resented by the Opposition. In the United Kingdom, by his hereditary tradition of authority and by long experience, the King has a measure of power which is wholly different from that enjoyed by any Governor-General in the Dominions, and he is able, as has recently been seen, to exercise a

deep influence on the course of government in cases where no political party in Parliament has a clear control and where crises of a national character emerge. The King in fact represents a reserve power of control over the due working of constitutional government, the only means in fact to secure that a majority will not abuse its power, for instance by extending the duration of Parliament in the face of the public will. The Dominions have virtually no similar safeguard, and it is the more incumbent therefore on their statesmen to adhere scrupulously to those limitations of mere majority power in Parliament which are essential if parliamentary government is to maintain itself.

(3) The Imperial Parliament still possesses a pre-eminence over all the other parliaments in the Empire, a fact which the Statute of Westminster solemnly acknowledges, in two ways. In the first place, it recognizes its right to legislate for the Dominions with the assent of their governments or parliaments, whose concurrence the Commonwealth formally requires. Secondly, it maintains intact the constitutional restrictions on the alteration of the Canadian, Australian, and New Zealand constitutions, thus perpetuating the restrictions imposed by earlier Imperial Acts. Even in the Union it has been recorded by both Houses of Parliament that the restrictions on the alteration of the Cape native franchise and of the rule as to languages in official use embodied in the South Africa Act, 1909, must continue to bind the Parliament, despite the power given in the statute to repeal Imperial Acts. This can only be good law on the doctrine that the Imperial Act of 1909 still continues to retain full effect and cannot be over-

ridden by the new powers granted. Moreover, the mere passing of the Act, which itself is incapable of being altered by any Dominion, is a formal assertion of sovereign power. The obvious question how that power can be surrendered is answered by the consideration that no attempt has been made in the statute to accomplish the impossible. Legally, as Bacon long ago perceived, the Imperial Parliament cannot limit the powers of any successor, but it is equally clear that it can declare a constitutional principle which will be far more binding than any mere law.

(4) The statute does not directly deal with the right of appeal to the Privy Council, or more accurately the power of the Crown under the prerogative and statute of 1844 alike to grant special leave to appeal from any decision of Dominion Courts, unless that right has been taken away by an Imperial Act, as in the case of certain constitutional issues as between the Commonwealth and the States or the States *inter se* in Australia. But the power to alter Imperial Acts leaves it open to the Union, to New Zealand, to Newfoundland, and probably to the Irish Free State to remove the right to appeal, unless, as some think, it is implicit in the Irish Treaty. In the case of the Federations the appeal can effectively be abolished only as part of constitutional change, which in Australia can be effected by a referendum, but in Canada needs an Imperial Act. This limitation of Canadian action rests on the compact character of the Federation, and the inability so far of the Provinces to agree on any system under which amendment could be carried out in Canada itself.

(5) The Dominions have in general constituent

powers similar to those of the United Kingdom, but Canada, as has been seen, is for the present an exception. The powers of the Irish Free State are limited to action consistent with the treaty of 1921, which overrides any legislation of the Free State.

(6) The Dominions have been accorded the right of extra-territorial legislation without restriction or definition, and it is possible that this wide grant, which was not that recommended by the Imperial Conference of 1923 or that asked for by Canada in 1920 and 1924, may give rise to inconvenient conflicts of law. The issue of merchant shipping has also been left in a rather difficult position. In lieu of agreeing, as would be natural, that each part of the Empire should regulate its own coasting trade and its registered shipping according to its views, subject always to any international agreements accepted by it, and should accept an equal right of each other part similarly to act, it is now possible for each part to regulate all shipping at pleasure subject only to an informal agreement which has no legal force and which in addition merely lays down counsels of perfection without binding obligation. Moreover, it has proved impossible for the several governments to agree to enforce within their territory the rules laid down by the other governments affecting their registered shipping, and it may be feared that serious evasions of legislation may thus be facilitated. Hitherto, of course, under the unified system in operation, the Merchant Shipping Acts have been enforced satisfactorily throughout the British Dominions. Friction and loss to British shipping and British trade can be avoided only by mutual determination

to adopt an attitude of sweet reasonableness, which, if past experience is any guide, is hardly likely to be evinced.

(7) But, taken on the whole, the situation presents no serious inconveniences. The Dominions suffer the minimum of loss through connexion with the United Kingdom. In one respect only are they still subject to restriction in legislative authority. To obtain admission of their stocks to the rank of trustee securities with the enormous advantage resulting thence, they have agreed that any Act violating the terms on which the moneys received were advanced should be regarded as liable properly to disallowance by the Crown. The absence of probability of a deliberate effort to evade obligations renders the issue of minor importance, but clearly it is impossible for any Dominion to dishonour this obligation, and it is uncertain on what terms money could be borrowed if it were abrogated in respect of future borrowings. This and other possibilities of inter-imperial friction explain the suggestions that have been made for the creation of a system of compulsory reference of such disputes to an inter-imperial tribunal, but so far, while the Dominions have agreed to accept compulsory reference of legal disputes to the Permanent Court of International Justice at the demand of foreign states, they have declined to commit themselves to obligatory arbitration of inter-imperial difficulties.

(8) The issue of inter-imperial arbitration inevitably presented itself when, during the passage of the Statute of Westminster through the House of Commons, it was suggested by Mr. Churchill among others that the statute should expressly deny to the

Irish Free State the power to alter the terms of the Anglo-Irish Treaty. The proposal itself was based on a failure to recognize that the treaty itself could not be affected by Irish legislation, for it forms the basis of the Free State's existence and legislative power, and the suggestion was rejected by the House on the earnest appeal of Mr. Baldwin and in view of strong representations from Mr. Cosgrave, who stressed the value attached to the treaty by the Free State. It would have been satisfactory had then the Free State offered to agree to inter-imperial arbitration on any issue arising as to the interpretation of the treaty between the two governments, in view of the fact that the Free State held that, as under the Statute of Westminster Canada would be able to abolish the appeal from the Supreme Court to the Privy Council, the Free State would acquire and would certainly use the like power to abolish the appeal from the State, to which importance was attached by representatives of the Protestant minority. This possibility was disputed by Sir Thomas Inskip, suggesting that inevitably there must arise conflicts of views within the Empire which, as Sir Stafford Cripps insisted, should be marked out for decision by a tribunal acceptable to both parties.

(9) The abolition of the restriction on Dominion legislative power raises the issue of the possibility of the action of a Dominion to deny that its nationals are also British subjects, for clearly the Irish Free State could now override the British Nationality and Status of Aliens Act, 1914-22, and declare that Irish citizens are not British subjects. This would be in itself of no serious importance, but what of the position in places where the Crown



exercises extra-territorial jurisdiction, such as Ethiopia or Muskat? Would Imperial Orders in Council under the Foreign Jurisdiction Act, 1890, apply to Irish citizens there, so that Consular Courts could deal with them? The answer clearly is that the power to repeal Imperial Acts is not an extra-territorial power, and that such persons would be British subjects for the purpose of the Imperial Acts unless and until the Imperial Parliament chooses to alter its legislation. In practice, of course, the issue will not arise in any normal case. The Dominions have no desire to see their nationals exposed to the dangers of absence of extra-territorial rights in semi-civilized countries or even in Egypt, and, unless they are accepted as British subjects, the foreign States concerned would be entitled to apply to them local law.

(10) There remains the question of the nature of the bond between the parts of the Empire. Is it terminable at will by any of the members, or does any member which desires to secede require the assent of the other members? The provision that the succession to the Crown can be altered only by concurrent legislation in all the parts is a declaration of constitutional principle, not necessarily a statement of law as it stands in the Statute of Westminster. But it is difficult to see as a matter of law how any Dominion legislature can possess the power to terminate its connexion with the Crown without the assent of the King himself. General Smuts has long ago insisted that no Governor-General could assent to such an Act, and in the case of the Irish Free State similar action would be flatly contrary to the Irish Treaty of 1921. The Parliaments of the other Dominions owe their

existence to Imperial Acts which are expressly passed for their government under the Crown, and, if they deny their continued connexion with the Crown, they commit a revolutionary act, not a legitimate exercise of legislative power. Happily the issue is at present academic, though its continued discussion in the Free State and the Union renders it impossible to ignore that it has been raised. "

In the field of external affairs international jurists have been busy in seeking to define the class of organization into which the British Empire must now fall, and there is probably a tendency to consider the position as analogous to that of a confederation. It is clear, of course, that it is more than a mere personal union, for, as we have seen, the connexion of the territories with the Crown is not subject to different rules in the several parts, so that it can be severed as was the bond between Hanover and the United Kingdom when Queen Victoria succeeded to the British throne. Nor are the parts linked as in the case of Hanover through the power of the King personally to dictate policy in one part of his Dominions, while in the other acting as a constitutional sovereign. The bond of union in form is primarily the common allegiance to the Crown, and, though it has so far proved difficult to adjust the issue of nationality, it is recognized by the Imperial Conference of 1930 that there must be, throughout the territories of the Empire recognition of a common status based on a common allegiance. In the second place, the governments and peoples are linked together by common understandings, recorded by the Imperial

Conference as to co-operation in foreign affairs. It has indeed proved possible for one part of the Empire, as in the Locarno Pact, to assume obligations while leaving the other parts free, but that was an exceptional if necessary deviation from common responsibility in an issue which might involve war, and it is most important to note that in the London Naval Treaty of 1930 the Dominions again appeared acting with the United Kingdom in a common effort to limit naval competition, and accepting the inevitable aggregation of their naval resources with those of the United Kingdom in the measurement of naval power. In the same way common accord has been reached in the vital matter of the acceptance of the Kellogg Pact of 1928, in the acceptance of the Optional Clause of the Statute of the Permanent Court of International Justice, and in adherence to the General Act of 1928 for the Pacific Settlement of International Disputes. Nor have the Dominions shown any reluctance to sympathize with the United Kingdom in its policy towards Egypt or Iraq, though they have not assumed responsibility for it. On the other hand, while they have made provision for their internal defence, they have left in increasing degree to the Imperial government the obligation of safeguarding the whole of the Empire from foreign attack by sea, even Australia under pressure of financial conditions reducing her naval preparations, while New Zealand and the Commonwealth alike have departed from the system of compulsory service for home defence introduced in 1910-11.

It is, it must be clearly recognized, the continued existence of the United Kingdom as a great power, and the creation of the League of Nations with its

sequel in the Paris Treaty for the Renunciation of War, that have enabled the Dominions to attain in safety a measure of international rank which else would have been quite impossible, unless they were prepared to lay on themselves crippling burdens of defence expenditure. The exact character of their international position has only slowly become apparent and even yet is not wholly clear. But the following points are of salient importance :

(1) The Dominions are sovereign international States in the sense that the King in respect of each of his Dominions (Newfoundland excepted) is such a State in the eyes of international law. That the bond between the Dominions and the United Kingdom through the possession of the same Crown cannot be broken at will affects in no degree this position. The Dominions have their own nationals, in so far as they care to define them, as Canada, the Union, and the Free State have done. Obligations can be assumed by each of them independently of the others or of the United Kingdom, and responsibility for the carrying out of these obligations rests alone on the Dominion government and parliament. Each Dominion may exercise the treaty power through its own representatives. Formally indeed so long as a Dominion chooses to adopt the normal forms and to conclude treaties signed by plenipotentiaries appointed by the King under the Great Seal of the Realm and to have them ratified by the King using the Great Seal, a British minister must intervene to authorize the use of the Great Seal. But it was established in 1931 by the action of the Irish Free State that the State might have its own seal for all such purposes, so that even this formal intervention of the United Kingdom

government may be dispensed with. The decision is of fundamental importance, for it removes a power which the British government formerly possessed in law of securing consideration of any proposed action which might injure the rights of other Dominions or of the United Kingdom.

(2) In treaty-making, however, the Dominions are pledged equally with the United Kingdom to afford every other part of the Empire the possibility of knowing in advance what negotiations are proposed to be carried on, and of determining its attitude towards such negotiations. Thus the rule of consultation is laid down, and generally respected, even if it has no legal sanction of any sort. How far in substance the Dominions may go in divergence from other parts of the Empire is left to considerations of common sense and solidarity of interests. Thus the Union in 1928 pledged itself for the time being to grant to Germany unconditionally all concessions it might make to any other part of the Empire, but the Irish Free State has in its treaties asserted emphatically its refusal to be bound to treat inter-imperial trade relations on the footing of international trade.

(3) No part of the Empire can directly impose by treaty any obligation of an active character on any other part. But the United Kingdom retains a certain pre-eminence; the Crown acting for the United Kingdom is still accustomed to stipulate in its commercial treaties for the right of the Dominions to attain the advantages thereof by adherence, or, failing adherence, to receive most-favoured-nation treatment or condition of reciprocity, so long as the Dominion adopts that attitude. This is a valuable privilege, and, though the Irish Free State main-

tains in theory that the King in such a treaty has no power to stipulate advantages for the Free State, it has in practice adopted the common-sense attitude of notifying its intention of availing itself of the boon thus bestowed, as in the case of the treaty with Rumania of 1930. Such action, however, in its view constitutes a new treaty relation and not a recognition of British authority to secure rights for the Dominions. A far more serious issue is whether by undertaking obligations which might lead to war the United Kingdom can involve the whole of the Dominions in a struggle, or whether they can claim the right to declare neutrality. The issue is rendered most difficult for the Free State by reason of the facilities for defence which under the treaty it must concede, for such a concession would deprive it of any right to expect its neutrality to be recognized by an enemy State. Yet a further difficulty is raised by the grave position in which the King would be involved if he were compelled to act personally in declaring neutrality for a Dominion, when his immediate territories were involved in a struggle. On the other hand, it has long been settled doctrine that no Dominion need take active steps to aid the Empire in any war which has not been brought about by its action.

(4) In yet another way the unity of the Crown impinges on separate international character. The British government, and apparently the Dominions other than the Free State and the Union, hold that relations *inter se* are not treaties of international law, and that disputes between them may not be submitted to the Permanent Court of International Justice. The Union holds that inter-imperial disputes should rather be laid before an inter-

imperial tribunal—an international tribunal might hold unsatisfactory views in a case of dispute between India and a Dominion—but the Irish Free State not merely declines to accept this view but insists that the treaty of 1921 is a treaty of international law to which Article 18 of the Covenant of the League is applicable, demanding registration with the Secretariat for its validity, and that any dispute between it and the United Kingdom must be submitted to the Permanent Court if it desires, on the score that the signature of the Optional Clause by the United Kingdom compels it to such submission. It is contended in support of this view that the British reservation has no validity as an attempt to go beyond the terms of the Optional Clause, a contention more ingenious than convincing.

(5) It still remains the happy privilege of the British government to place gratuitously at the disposal of the Dominions in all these places where they have not established legations of their own the services of the British diplomatic service, and further to afford to Dominion citizens or nationals the aid of the vast British Consular service. Moreover, in Washington between the British Ambassador and the envoys of Canada, the Union, and the Irish Free State; in Tokyo between the Ambassador and the Canadian Minister; in France between the Ambassador and the Ministers of Canada and the Free State; at The Hague where the Union is represented, and even at the Vatican where the Free State has an envoy, there is cordial co-operation in furthering the common aims of the Empire, which far exceed in importance those issues on which there are divergences of interest or outlook. The new status of the Dominions is so

recent that it is hardly surprising that it has only of late been appreciated in foreign lands, or that earnest nationalists in the Dominions themselves spend their energies in conjuring up visions of Imperial reluctance to surrender power or to acknowledge Dominion equality in status. In stature indeed there remains a vast divergence between the United Kingdom and even Canada, the premier Dominion, but it is a gulf which time will bridge, and in the course of its passage the doubts which evoke fears of Imperial supremacy will resolve themselves and cease to hinder fruitful co-operation for common ideals. Whether at some future date a more definite confederation may be formed, it is idle to speculate; the essential thing is that the Dominions have attained national sovereignty, and that the United Kingdom has lent all its strength to secure for that sovereignty the full recognition of foreign States.

(6) One issue there is which presents the possibility of difficulty, though there is no need to anticipate serious trouble. As matters stand, control of the highest attributes of external sovereignty is still, even in respect of the Dominions, formally vested in the King personally and is not delegated to his representatives in the Dominions. It is in theory possible that the King might be confronted on issues of fundamental importance of war and peace by conflicting advice from his governments in the United Kingdom and in one or more of the Dominions; thus, for instance, the Irish Free State might desire to remain neutral while the British government deemed war essential. In such a case, it has been suggested, the King might have to perform personally the difficult task of seeking



to secure reconciliation of opposing views. But it must be noted that His Majesty necessarily stands in fact in a very different relation to his United Kingdom ministers from that which he occupies with regard to ministers in the Dominions. With the former he is in daily and effective touch, and can bring to bear on any issue the full weight of intimate knowledge of those with whom he has to deal and of the conditions of feeling in the United Kingdom. In the case of the Dominions, on the other hand, it is impossible that the King should be in effective touch with the ministry, and lack of such contact must gravely diminish the power of acting as a reconciler of conflicting aims. Moreover, there is inherent in any such action a grave danger, if it is intended that in the ultimate issue the King should have the right to reject Dominion advice on the suggestion of United Kingdom ministers, or to overrule British ministers to meet Dominion views. Such action might uproot loyalty to the throne, and it can hardly be doubted that Mr. McGilligan is right in his contention that in foreign issues the King must ultimately accept the advice of ministers, even if he is convinced of its unwisdom. On the other hand, it would be invidious for His Majesty to have to appear as formally responsible for contradictory policies, and for action by a Dominion which public opinion in the United Kingdom might deem to run counter to British interests. This consideration suggests the conclusion that it would be unfair to lay the burden of co-ordination of foreign policy in any sense on the sovereign, and that it may ultimately be necessary to reconsider the present rule of withholding from the representatives of the Crown in the Dominions the exercise of

the prerogative in issues of foreign affairs. It is, however, possible that the necessity of informing and receiving information from the King may be regarded as of sufficient value to outweigh this consideration, and at any rate it is permissible to hope that with the progress of co-operation between the several parts of the Empire the issue may remain wholly academic and it may remain unnecessary to deal definitely with it. The issues involved have hardly been seriously considered in any Dominion save the Irish Free State, where the Minister of External Affairs and his Department have devoted anxious attention to these and allied problems.

The progress of the Dominions through the intervention of the Imperial Conference system has naturally not directly affected the status of the States of Australia and the Provinces of Canada, which have no direct contact with the Conference. It is, therefore, not surprising that bitterness has been engendered in some measure in Australia, leading to protests from some of the States against the enactment of a measure which may increase the powers of the Federation and so indirectly at least lower their stature. The amendment of the proposals so far as they concern the Commonwealth, which was secured by the arguments when in opposition of Mr. Latham, now Attorney-General of the Commonwealth, does something to meet the resentment of the States. Moreover, the Conference has been at pains in no wise to suggest that the privileges which it accords to the Dominions should be denied so far as is appropriate to the States. They have not, however, been granted by the statute the boon of

extra-territorial power or the right to repeal or amend Imperial Acts applying to them. The latter power was secured for the Provinces by Mr. Bennett, in return, no doubt, for their acquiescence in the enactment of the Statute of Westminster in its application to Canada. The importance of the power in their case is not very great, for the field of their operations is hardly affected by Imperial legislation proper, as opposed to British Acts adopted as part of local law which they can freely repeal as matters stand. To extend their powers extra-territorially would have been to alter the British North America Act itself, which confines their authority to legislation in the Province. In the case of the States the extension of power to legislate extra-territorially would be of far greater importance, seeing that they control, as the Canadian Provinces do not, criminal law in general, and that the operation of their laws as to taxation has been restricted by the Courts to matters which can be brought into effective connexion with the States. It remains, however, for future action to decide this issue, and also the further question whether, as in the Commonwealth, the choice of the representative of the Crown should rest with the local government or remain vested in the King, acting on the advice of the British government, after consultation with the local ministry. This question in the more limited form of the desire for the selection of local men as Governors has been raised, but not definitely decided in view of divergence of view between the States and, even, as in the case of Victoria, between successive governments in the same State.

The status of Newfoundland, it should be noted,

differs from that of the rest of the Dominions through its not being a member of the League of Nations, a fact which is of great importance in the matter of international status, but in no wise lessens the status of the Dominion in the British Empire. The suggestion of union with Canada has not been fulfilled, and the award of the Rivington Council in 1927 has increased greatly the area and potential wealth of the Dominion.

The relations between the Dominions and India have in some measure been ameliorated in consequence of the direct communications between their governments which have been freely developed since the Imperial Conference of 1923. In special the Commonwealth of Australia has recognized the status of Indians lawfully domiciled by according them the franchise, and negotiations carried on in South Africa itself secured in 1927 a measure of agreement regarding the future of Indians in that territory. The Union government made it plain that there was no welcome in the Union for those Indians who did not seek to acquire Western civilization, and that it was anxious to send to India as many as possible of the resident Indian community. But it agreed to aid those who chose Western ideals to reach their goal, though it will clearly be long before the franchise can be conceded even to such aspirants. Far more important, of course, for India is the extension of the sphere of Dominion status by the action of the Imperial Conference, for Indian aspirations are set on the acquisition of that status as the legitimate outcome of the long and glorious Imperial history of that great land.

It will be noted that the speakers at the Imperial

Conference of 1930 were inclined to stress the importance of replacing the political and legal unity which they were agreed to destroy by a new unity based on the material bonds of co-operation in trade. The results of that Conference were in this field negative, but, with the advent to power of a National Government in the United Kingdom, the passing of the Statute of Westminster opens the way to progress in a sphere far remote from constitutional issues. Thus, while in a very real sense the statute closes one era in the history of the Empire, it opens the way to achievement in another and not less important sphere.

The statute abolishes for future Acts the application of the term 'colonies' to the Dominions, the Provinces, or the States, but it makes no effort to define the term 'British Empire' or to substitute for it the variant 'British Commonwealth of Nations'. Through the development of Dominion autonomy, the term 'British Empire' in the Covenant of the League has come in practice to denote primarily the Empire less the Dominions, but this must not unduly be pressed. Every part of the Empire has the right to expect that the Empire delegate to the League Council, though he is the nominee of the United Kingdom, shall be mindful of its interests, and this is in harmony with the standpoint of United Kingdom governments, which, as they have repeatedly asserted, recognize the necessity of cordial co-operation with and regard for Dominion needs. Similarly, the terms are used in the same sense in the fundamental documents of the Constitution of the Irish Free State, and the style 'Imperial Conference' is as acceptable to the rest of the Empire as 'Commonwealth Conference'.

## INTRODUCTION

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is to the Irish Free State. It may be doubted if anything is to be gained by seeking to make the Empire merely a subdivision of the Commonwealth or vice versa, and at any rate in the documents recorded hitherto in the Dominions in general the older terminology has prevailed. Exception is indeed taken from time to time to the maintenance of the term 'Imperial Parliament', but, as Mr. Latham insisted in reply to an objection of Mr. Hughes's on this score, there is no possibility of questioning the justice of the term. It is thanks to the Imperial power of the United Kingdom that it has been possible for the Dominions to attain national sovereignty, and it may be confidently believed that that power will still continue, so that under its aegis other of His Majesty's territories may gradually achieve the fullest measure of autonomy.

To Sir John Simon, Sir Thomas Inskip, Sir Stafford Cripps, and Mr. Winston Churchill I am much obliged for their ready consent to the use made of their speeches. My special thanks are due to the two protagonists in the evolution of Dominion sovereignty, Mr. Mackenzie King and Mr. McGilligan, whose courtesy has enabled me fully to express their distinctive contributions to the achievement of Dominion sovereignty. For much assistance in the difficult task of selection I am indebted to my wife, and Dr. Humphrey Milford has greatly facilitated the undertaking by permitting me to exceed the limits per volume set for *Selected Speeches and Documents on British Colonial Policy (1763-1917)*, which this selection brings up to date.

A. BERRIEDALE KEITH.

THE UNIVERSITY OF EDINBURGH,  
December 11, 1931.

PS. Opportunity has been taken of the passage of the work through the press to include certain documents bearing on the validity of the Irish Agreement of 1921.

I

THE IMPERIAL WAR CABINET AND  
THE ATTAINMENT OF INTER-  
NATIONAL STATUS FOR THE  
DOMINIONS, 1918-19



## I. THE IMPERIAL WAR CABINET: ITS CHARACTER AND ACHIEVEMENT

WITH every year that has passed the participation of the Empire as a whole in the War has become more complete and more intimate. In every sphere of war effort and sacrifice—in the raising and equipping of troops, in the furnishing and control of food-stuffs and raw materials, in the financing of their efforts by loan or taxation, in the cheerful acceptance of inevitable restrictions on the economic life of the individual and the community—the various units which compose the British Commonwealth showed, in the past year, that their loyalty to the common cause and their determination to ensure its victory were only strengthened by the prolongation and the increasing cost of the struggle. Those efforts and sacrifices were crowned by the amazing series of victories won by British arms in the closing half of a year which deserves to rank with 1759 as *annus mirabilis*, a year of wonders. And in those victories the troops of every portion of the Empire played a conspicuous part. In the West, the forces of every British Dominion shared equally with the troops of the old Homeland and with our gallant Allies the glory of finally breaking down the resistance of the German Armies. In the East, General Allenby, with an army composed almost exclusively of the forces of the British Commonwealth, and, in very large measure, of Indian troops, achieved a success, more complete in the purely military sense than any other single victory in this war. Particulars of the military and economic effort of the different portions of the Empire, and of the part played by their forces in the various theatres of war will be found in the appropriate sections of this Report. It is enough here to note the truly Imperial character of the war as an external phenomenon in order to

appreciate its inevitable effect upon the internal constitutional relations of the component parts of the British Commonwealth.

The common effort and sacrifice in the war have inevitably led to the recognition of an equality of status between the responsible Governments of the Empire. This equality has long been acknowledged in principle, and found its adequate expression in 1917 in the creation, or rather the natural coming into being, of the Imperial War Cabinet as an instrument for evolving a common Imperial policy in the conduct of the war. The nature of the constitutional development involved in the establishment as a permanent institution of the Imperial Cabinet system, was clearly explained by Sir Robert Borden in a speech to the Empire Parliamentary Association on the 21st June, 1918:

A very great step in the constitutional development of the Empire was taken last year by the Prime Minister when he summoned the Prime Ministers of the Overseas Dominions to the Imperial War Cabinet. We meet there on terms of perfect equality. We meet as Prime Ministers of self-governing nations. We meet there under the leadership and the presidency of the Prime Minister of the United Kingdom. After all, my Lord Chancellor and Gentlemen, the British Empire, as it is at present constituted, is a very modern organization. 'It is perfectly true that it is built up on the development of centuries, but, as it is constituted to-day, both in territory and in organization, it is a relatively modern affair. Why, it is only seventy-five years since responsible government was granted to Canada. It is only a little more than fifty years since the first experiment in Federal Government—in a Federal Constitution—was undertaken in this Empire. And from that we went on, in 1871, to representation in negotiating our Commercial Treaties, in 1878, to complete fiscal autonomy, and after that to complete fiscal control and the negotiation of our own treaties. But we have always lacked the full status of nationhood, because you exercised here a so-called trusteeship, under which you undertook to deal with

foreign relations on our behalf, and sometimes without consulting us very much. Well, that day has gone by. We come here, as we came last year, to deal with all these matters, upon terms of perfect equality with the Prime Minister of the United Kingdom and his colleagues. It has been said that the term 'Imperial War Cabinet' is a misnomer. The word 'Cabinet' is unknown to the law. The meaning of 'Cabinet' has developed from time to time. For my part I see no incongruity whatever in applying the term 'Cabinet' to the association of Prime Ministers and other Ministers who meet around a common council board to debate and to determine the various needs of the Empire. If I should attempt to describe it, I should say it is a Cabinet of Governments. Every Prime Minister who sits around that board is responsible to his own Parliament and to his own people; the conclusions of the War Cabinet can only be carried out by the Parliaments of the different nations of our Imperial Commonwealth. Thus, each Dominion, each nation, retains its perfect autonomy. I venture to believe, and I thus expressed myself last year, that in this may be found the genesis of a development in the constitutional relations of the Empire, which will form the basis of its unity in the years to come.

The second session of the Imperial War Cabinet opened on June 11th. . . .

In the representation of India an important and significant change was introduced. Whereas at the previous session India had been represented by the Secretary of State for India, accompanied by three assessors, she was on this occasion represented by the Secretary of State for India, the Right Hon. E. S. Montagu, and the Hon. S. P. Sinha, Member of the Executive Council of the Governor of Bengal, who, in accordance with the statement of the Prime Minister in the House of Commons on May 17th, 1917, was deputed to this country as the representative of the people of India. The Maharaja of Patiala also attended the meetings as the spokesman of the Princes of India.

The second session of the Imperial War Cabinet

coincided with the most critical phase of the military operations in the Western Theatre. When it opened the German offensive had just attained what was to prove its climax by the advance from the Chemin des Dames to the Marne. Everything depended on whether another German offensive succeeded in achieving a military decision during the two or three months before the emergency measures for bringing over the American Army and reinforcing the depleted British divisions could take effect. The offensive failed, and before the full session of the Imperial War Cabinet closed the great Allied counter-offensive was already in full progress. The deliberations of the Imperial War Cabinet are necessarily secret, but it is well known that they were not confined to the all-absorbing military problems, but covered the whole field of Imperial policy, including many aspects of foreign policy and the war aims for which the British Commonwealth was fighting. It is worth noting, in this connexion, that the Oversea members of the Imperial War Cabinet not only helped to settle the policy to be adopted by the British government at the session of the Allied Supreme War Council at Versailles in July, but also attended one of the meetings of the Supreme War Council in person.

During this second session certain improvements were also introduced in the actual machinery of the Imperial War Cabinet system. It was felt that the Dominion Prime Ministers should, as his colleagues on the Imperial War Cabinet, correspond directly with the Prime Minister of the United Kingdom whenever they wished to do so. The experience of the past year had also shown the practical inconvenience resulting from the fact that, while the Prime Ministers of the Dominions could only attend the Imperial War Cabinet for a few weeks in the year, matters of the greatest importance, from the point of view of the common interest, inevitably

arose and had to be decided in the interval between the sessions. The natural remedy for this defect lay in giving the Imperial War Cabinet continuity by the presence in London of Oversea Cabinet Ministers definitely nominated to represent the Prime Ministers in their absence. The Imperial War Cabinet, consequently, on July 30th, accepted the following Resolution:

- I. (1) The Prime Ministers of the Dominions, as members of the Imperial War Cabinet, have the right of direct communication with the Prime Minister of the United Kingdom, and vice versa.
  - (2) Such communications should be confined to questions of Cabinet importance. The Prime Ministers themselves are the judges of such questions.
  - (3) Telegraphic communications between the Prime Ministers should, as a rule, be conducted through the Colonial Office machinery, but this will not exclude the adoption of more direct means of communication in exceptional circumstances.
- II. In order to secure continuity in the work of the Imperial War Cabinet and a permanent means of consultation during the war on the more important questions of common interest, the Prime Minister of each Dominion has the right to nominate a Cabinet Minister either as a resident or visitor in London to represent him at meetings of the Imperial War Cabinet to be held regularly between the plenary sessions.

It was decided that arrangements should be made for the representation of India at those meetings.

After the close of the second session several meetings of the British War Cabinet were attended by

such representatives of the Dominions as still remained in the United Kingdom, but before the arrangements contemplated in the second of the above Resolutions could take effect the rapid collapse of the Central Powers precipitated the whole question of the discussion of terms of peace. The moment this was realized the Dominion Prime Ministers were warned to be in readiness to come over in order to be in close touch, as members of the Imperial War Cabinet, with the whole situation, and to take part in the discussions between the Allies as to the peace settlement itself. The Viceroy of India was also invited to send representatives to London for the same purpose.

By November 20th, 1918, the third Session of the Imperial War Cabinet had commenced the consideration of the many questions relating to the Peace Settlement. Before the end of the year not less than twelve meetings had been held, although it was not until December 18th that the numbers of the Imperial War Cabinet were completed, except for the representatives of New Zealand, by the arrival of General Botha, representing South Africa, and the Maharaja of Bikaner and Sir S. P. Sinha. Two of the most interesting of these meetings were held on the morning and afternoon of December 3rd, when the Imperial War Cabinet met M. Clemenceau and Marshal Foch, Representatives of France, and Signor Orlando and Baron Sonnino, Representatives of Italy, who had arrived in London for an important Conference. Important meetings were also held before and after Christmas, at the time of President Wilson's visit. Thus the year 1918, which had confronted the Imperial War Cabinet with so many anxious and critical war problems, left them at its close engaged on the scarcely less difficult, but certainly less anxious, questions of the Peace Settlement.

## II. THE IMPERIAL WAR CONFERENCE, 1918

### 1. *The Dominions and India.*

IN 1918, as in 1917, an Imperial War Conference was held in London concurrently with the meetings of the Imperial War Cabinet, under the chairmanship of the Secretary of State for the Colonies. This Conference was, for the first time, fully representative of all parts of the Empire, since members from Australia, who had been unavoidably absent in 1917, were present as well as Ministers from all the other self-governing Dominions and India.

A great part of the deliberations of the Conference was of a confidential nature and entirely unsuitable for publication—at any rate during the war, but it was found possible to publish (Cd. 9177) a certain part of the discussions and the great majority of the Resolutions passed.

The Conference of 1917 had accepted the principle of reciprocity of treatment between India and the Dominions in the matter of immigration. In 1918 a further resolution was passed elaborating the principle already laid down. The resolution read as follows:

1. It is an inherent function of the Governments of the several communities of the British Commonwealth, including India, that each should enjoy complete control of the composition of its own population by means of restriction on immigration from any of the other communities.

2. British citizens domiciled in any British country, including India, should be admitted into any other British country for visits, for the purpose of pleasure or commerce, including temporary residence for the purpose of education. The conditions

of such visits should be regulated on the principle of reciprocity, as follows:

- (a) The right of the Government of India is recognized to enact laws which shall have the effect of subjecting British citizens domiciled in any other British country to the same conditions in visiting India as those imposed on Indians desiring to visit such country.
- (b) Such right of visit or temporary residence shall, in each individual case, be embodied in a passport or written permit, issued by the country of domicile, and subject to *visé* there by an officer appointed by, and acting on behalf of, the country to be visited, if such country so desires.
- (c) Such right shall not extend to a visit or temporary residence for labour purposes or to permanent settlement.

3. Indians already permanently domiciled in the other British countries should be allowed to bring in their wives and minor children on condition (a) that not more than one wife and her children shall be admitted for each such Indian, and (b) that each individual so admitted shall be certified by the Government of India as being the lawful wife or child of such Indian.

Important resolutions were also passed approving of the cutting down of inter-Imperial telegraphic rates, the revision of our naturalization laws, and last, but not least, the establishment of a single Imperial Court of Appeal to replace the present dual system by which British appeals go to the House of Lords and appeals from the rest of the Empire to the Judicial Committee of the Privy Council.



*2. Naval Defence and Dominion Autonomy: Memorandum of Dominion Ministers, 1918*

The Dominion Ministers, having considered the Admiralty memorandum of May 17, 1918, on the naval defence of the British Empire, which was circulated to the Imperial War Conference, 1918, submit the following conclusions and observations:

1. The proposals set forth in the Admiralty memorandum for a single navy at all times under a central naval authority are not considered practicable.

2. Purely from the standpoint of naval strategy the reasons thus put forward for the establishment of a single navy for the Empire, under a central naval authority, are strong but not unanswerable. The experience gained in this war has shown that in time of war a Dominion navy (e.g. that of Australia) can operate with highest efficiency as part of a united navy under one direction and command established after the outbreak of war.

3. It is thoroughly recognized that the character of construction, armament and equipment, and the methods and principles of training, administration, and organization, should proceed upon the same lines in all the navies of the Empire. This policy has already been followed in those Dominions which have established naval forces.

4. For this purpose the Dominions would welcome visits from a highly qualified representative of the Admiralty who, by reason of his ability and experience, would be thoroughly competent to advise the naval authorities of the Dominions in such matters.

5. As naval forces come to be developed upon a considerable scale by the Dominions, it may be necessary hereafter to consider the establishment for war purposes of some supreme naval authority upon which each of the Dominions would be adequately represented.

### III. THE SIGNATURE AND RATIFICATION OF THE PEACE TREATIES AS AFFECTING THE DOMINIONS

#### 1. *The Rt. Hon. Sir R. Borden's Memorandum, January 2, 1919*

IN Cabinet to-day I took up the question of representation of the Dominions and spoke very frankly and firmly as to Canada's attitude. My proposal, which I consider the most satisfactory solution that is practicable and which was accepted by the Cabinet, is as follows:

First, Canada and the other Dominions shall each have the same representation as Belgium and the other small allied nations at the Peace Conference.

Second, as it is proposed to admit representatives of Belgium and other small allied nations only when their special interests are under consideration, I urged that some of the representatives of the British Empire should be drawn from a panel on which each Dominion Prime Minister shall have a place.

I pointed out that Canada has no special interest, such as South Africa, Australia, and New Zealand, in respect of additional territory, and that the basis of representation accorded to small allied nations would, therefore, be unsatisfactory from the Canadian point of view. I emphasized the insistence of Canada on this recognition, and I urged that the British Empire has the right to define the constitutional relations between the nations which compose it and their consequent right to distinctive representation. It is anticipated that the British Empire will have five representatives entitled to be present at all meetings of the Conference. I expressed my strong opinion that it would be most unfortunate if these were all selected from the British Islands. Probably three will be named and two others selected from the panel for each meeting. The panel

will comprise both British and Dominion ministers. No public announcement can be made until these proposals have been communicated to all allied Governments and accepted. I shall be glad to have views of Council. My proposal really gives to Dominions fuller representation than that accorded to small allied nations such as Belgium.

*2. Rules of Representation at the Peace Conference of Paris, 1919*

1. The Belligerent Powers with general interests (the United States of America, the British Empire, France, Italy, Japan) shall attend all sessions and commissions.

The Belligerent Powers with special interests (Belgium, Brazil, the British Dominions and India, China, Cuba, Greece, Guatemala, Hayti, the Hedjaz, Honduras, Liberia, Nicaragua, Panama, Poland, Portugal, Roumania, Serbia, Siam, the Czecho-Slovak Republic) shall attend the sessions at which questions concerning them are discussed.

2. The Powers shall be represented by plenipotentiary delegates to the number of

five for the United States of America, the British Empire, France, Italy, Japan; three for Belgium, Brazil, Serbia; two for China, Greece, the Hedjaz, Poland, Portugal, Roumania, Siam, the Czecho-Slovak Republic; one for Cuba, Guatemala, Hayti, Honduras, Liberia, Nicaragua, Panama; one for Bolivia, Ecuador, Peru, Uruguay.

The British Dominions and India shall be represented as follows: two delegates each for Canada, Australia, South Africa, India (including the Native States); one delegate for New Zealand.

Each delegation will be entitled to set up a panel, but the number of plenipotentiaries shall not exceed the figures given above.

The representatives of the Dominions (including Newfoundland) and of India can, moreover, be included in the representation of the British Empire by means of the panel system.

3. *The Rt. Hon. Sir R. Borden's Memorandum,*  
*March 12, 1919*

1. The Dominion Prime Ministers, after careful consideration, have reached the conclusion that all the treaties and conventions resulting from the Peace Conference should be so drafted as to enable the Dominions to become parties and signatories thereto. This procedure will give suitable recognition to the part played at the Peace Table by the British Commonwealth as a whole and will at the same time record the status attained there by the Dominions.

2. The procedure is in consonance with the principles of constitutional government that obtain throughout the Empire. The Crown is the supreme executive in the United Kingdom and in all the Dominions, but it acts on the advice of different ministries within different constitutional units;<sup>1</sup> and under Resolution IX of the Imperial War Conference, 1917, the organization of the Empire is to be based upon equality of nationhood.

3. Having regard to the high objects of the Peace Conference, it is also desirable that the settlements reached should be presented at once to the world in the character of universally accepted agreements so far as this is consistent with the constitution of each State represented. This object would not be achieved if the practice heretofore followed of merely inscribing in the body of the Convention an express reservation providing for the adhesion of the Dominions

<sup>1</sup> Hence in the case of the Irish Boundary Commission the Privy Council ruled that the Government of the United Kingdom could not advise the Crown to appoint a Commissioner for Northern Ireland: July 1924, Cmd. 2214.

were adopted in these treaties; and the Dominions would not wish to give even the appearance of weakening this character of the Peace.

4. On the constitutional point, it is assumed that each Treaty or Convention will include clauses providing for ratification similar to those in The Hague Conventions of 1907. Such clauses will, under the procedure proposed, have the effect of reserving to the Dominions Governments and legislatures the same power of review as is provided in the case of other contracting parties.

5. It is conceived that this proposal can be carried out with but slight alterations of previous treaty forms. Thus:

(a) The usual recital of heads of States in the Preamble needs no alteration whatever, since the Dominions are adequately included in the present formal description of the King, namely 'His Majesty the King of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, Emperor of India'.

(b) The recital in the Preamble of the names of the plenipotentiaries appointed by the High Contracting Parties for the purpose of concluding the Treaty would include the names of the Dominion plenipotentiaries immediately after the names of the plenipotentiaries appointed by the United Kingdom. Under the general heading 'the British Empire', the subheadings 'the United Kingdom', 'the Dominion of Canada', 'the Commonwealth of Australia', 'the Union of South Africa', &c., would be used as headings to distinguish the various plenipotentiaries.<sup>1</sup>

(c) It would then follow that the Dominion pleni-

<sup>1</sup> This proposal was not precisely followed: the Peace Treaties were (1) concluded in the names of States, not their heads, and (2) plenipotentiaries were named for the Dominions as suggested, but the sphere of action of the other British plenipotentiaries was not indicated. See the Washington Treaty, 1921, Pt. II. ii, *post*. The full plan was adopted in 1926; Pt. V. ix, *post*.

potentiaries would sign according to the same scheme.

6. The Dominion Prime Ministers consider, therefore, that it should be made an instruction to the British member of the drafting commission of the Peace Conference that all treaties should be drawn according to the above proposal.

#### IV. THE COVENANT OF THE LEAGUE OF NATIONS, 1919

*(Edition Cmd. 2300 embodying the Amendments of Articles 12, 13, and 15, in force from September 26, 1924)*

##### THE High Contracting Parties,

In order to promote international co-operation and to achieve international peace and security—  
by the acceptance of obligations not to resort to war,

by the prescription of open, just, and honourable relations between nations,

by the firm establishment of the understandings of international law as the actual rule of conduct among Governments,

and by the maintenance of justice and a scrupulous respect for all Treaty obligations in the dealings of organized peoples with one another,  
agree to this Covenant of the League of Nations.

##### Article 1.

The original Members of the League of Nations shall be those of the signatories which are named in the Annex to this Covenant, and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be affected by a Declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League.

Any fully self-governing State, Dominion<sup>1</sup>, or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it

<sup>1</sup> The Irish Free State was duly admitted under this Article on September 10, 1923, having given the necessary assurance under Act No. 41 of 1923.

shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval, and air forces and armaments.

Any Member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

#### Article 2.

The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat.

#### Article 3.

The Assembly shall consist of representatives of the Members of the League.

The Assembly shall meet at stated intervals and from time to time, as occasion may require, at the seat of the League, or at such other place as may be decided upon.

The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

At meetings of the Assembly each Member of the League shall have one vote and may have not more than three representatives.

#### Article 4.

The Council shall consist of representatives of the Principal Allied and Associated Powers<sup>1</sup> together with representatives of four other Members of the League. These four Members of the League shall be selected by the Assembly from time to time in its

<sup>1</sup> The Principal Allied and Associated Powers are the following: The United States of America, the British Empire, France, Italy, and Japan (see preamble of the Treaty of Peace with Germany). Germany was accorded a permanent seat in 1926.



discretion. Until the appointment of the representatives of the four Members of the League first selected by the Assembly, representatives of Belgium, Brazil, Spain, and Greece shall be members of the Council.

With the approval of the majority of the Assembly, the Council may name additional Members of the League whose representatives shall always be members of the Council; the Council, with like approval, may increase<sup>1</sup> the number of Members of the League<sup>2</sup> to be selected by the Assembly for representation on the Council.

The Council shall meet from time to time as occasion may require, and at least once a year, at the seat of the League, or at such other place as may be decided upon.

The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

Any Member of the League not represented on the Council shall be invited to send a representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League.

At meetings of the Council, each Member of the League represented on the Council shall have one vote, and may have not more than one representative.

#### Article 5.

Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the

<sup>1</sup> The number of members of the Council selected by the Assembly was increased to six instead of four by virtue of a resolution adopted by the Third Assembly on September 25, 1922, and to nine in 1926, holding their places for three years, with in certain conditions possibility of re-election.

<sup>2</sup> Dominions were to be regarded as Members of the League, despite the permanent seat accorded to the British Empire, for the purpose of this Article, Canada being elected in 1927, and the Irish Free State in 1930.

Council shall require the agreement of all the Members of the League represented at the meeting.

All matters of procedure at meetings of the Assembly or of the Council, including the appointment of Committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the Members of the League represented at the meeting.

#### Article 8.

The Members of the League recognize that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety, and the enforcement by common action of international obligations.

The Council, taking account of the geographical situation and circumstances of each State shall formulate plans for such reduction for the consideration and action of the several Governments.

Such plans shall be subject to reconsideration and revision at least every ten years.

After these plans shall have been adopted by the several Governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council.

The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those Members of the League which are not able to manufacture the munitions and implements of war necessary for their safety.

The Members of the League undertake to interchange full and frank information as to the scale of their armaments, their military, naval, and air programmes and the condition of such of their industries as are adaptable to warlike purposes.

## Article 10.

The Members of the League undertake to respect and preserve, as against external aggression, the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression, the Council shall advise upon the means by which this obligation shall be fulfilled.

## Article 11.

Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise, the Secretary-General shall, on the request of any Member of the League, forthwith summon a meeting of the Council.

It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

## Article 12.

The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture they will submit the matter either to arbitration or *judicial settlement* or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the *judicial decision*, or the report by the Council.

In any case, under this Article the award of the arbitrators or the *judicial decision* shall be made

within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

#### Article 13.

The Members of the League agree that whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration or *judicial settlement*, and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration or *judicial settlement*.

Disputes as to the interpretation of a Treaty, as to any question of international law, as to the existence of any fact which, if established, would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration or *judicial settlement*.

*For the consideration of any such dispute, the Court to which the case is referred shall be the Permanent Court of International Justice, established in accordance with Article 14, or any tribunal agreed on by the parties to the dispute or stipulated in any Convention existing between them.*

The Members of the League agree that they will carry out in full good faith any award or decision that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto.

#### Article 14.

The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International

Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

#### Article 15.

If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration or *judicial settlement* in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.

For this purpose the parties to the dispute will communicate to the Secretary-General, as promptly as possible, statements of their case with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

The Council shall endeavour to effect a settlement of the dispute, and, if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

If the dispute is not thus settled, the Council, either unanimously or by a majority vote, shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

If a report by the Council is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

If the dispute between the parties is claimed by one of them, and is found by the Council to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute provided that such request be made within fourteen days after the submission of the dispute to the Council.

In any case referred to the Assembly, all the provisions of this Article and of Article 12, relating to the action and powers of the Council, shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the representatives of those Members of the League represented on the Council, and of a majority of the other Members of the League, exclusive in each case of the representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the representatives of one or more of the parties to the dispute.

## Article 16.

Should any Member of the League resort to war in disregard of its Covenants under Articles 12, 13, or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the Covenant-breaking State, and the prevention of all financial, commercial, or personal intercourse between the nationals of the Covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval, or air force the Members of the League shall severally contribute to the armed forces to be used to protect the Covenants of the League.

The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimize the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the Covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the Covenants of the League.

Any Member of the League which has violated any Covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the representatives of all the other Members of the League represented thereon.

## Article 17.

In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles 12 to 16 inclusive shall be applied with such modifications as may be deemed necessary by the Council.

Upon such invitation being given, the Council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

If a State so invited shall refuse to accept the obligations of membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article 16 shall be applicable as against the State taking such action.

If both parties to the dispute, when so invited, refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

## Article 18.

Every Treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat, and shall, as soon as possible, be published by it. No such Treaty or international engagement shall be binding until so registered.



## Article 19.

The Assembly may from time to time advise the reconsideration by Members of the League of Treaties which have become inapplicable, and the consideration of international conditions whose continuance might endanger the peace of the world.

## Article 20.

The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

In case any Member of the League shall, before becoming a Member of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such member to take immediate steps to procure its release from such obligations.

## Article 21.

Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as Treaties of Arbitration, or regional understandings like the Monroe doctrine, for securing the maintenance of peace.

## Article 22.

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them, and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization, and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who, by reason of their resources, their experience, or their geographical position, can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the Mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic, and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases, and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of

civilization, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

In every case of Mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon, by the Members of the League, be explicitly defined in each case by the Council.

A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the Mandates.

#### Article 26.

Amendments to this Covenant will take effect when ratified by the Members of the League whose representatives compose the Council, and by a majority of the Members of the League whose representatives compose the Assembly.

No such amendments shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League.

## ANNEX

I.—*Original Members of the League of Nations, Signatories of the Treaty of Peace.*

United States of America.	Cuba.	Panama.
	Ecuador.	Peru.
Belgium.	France.	Poland.
Bolivia.	Greece.	Portugal.
Brazil.	Guatemala.	Roumania.
British Empire.	Haiti.	Serb - Croat - Slovene State.
Canada.	Hedjaz.	Siam.
Australia.	Honduras.	Czecho-Slovakia.
South Africa.	Italy.	Uruguay.
New Zealand.	Japan.	
India.	Liberia.	
China.	Nicaragua.	

*States invited to accede to the Covenant.*

Argentine Republic.	Norway.	Sweden.
Chile.	Paraguay.	Switzerland.
Colombia.	Persia.	Venezuela.
Denmark.	Salvador.	
Mexico (added September, 1931)	Spain.	
Netherlands. <sup>1</sup>		

<sup>1</sup> The following have also been admitted: Abyssinia, Albania, Austria, Bulgaria, Dominican Republic, Estonia, Finland, Germany, Hungary, Irish Free State, Latvia, Luxemburg, and Lithuania. The United States, Ecuador, and the Hedjaz never became members, and Brazil withdrew.

V. THE RT. HON. D. LLOYD GEORGE,  
HOUSE OF COMMONS, JULY 3, 1919

THE PRIME MINISTER (*whose rising was the subject of a general ovation, Members standing and cheering*): I have to lay on the Table of the House, and to ask the leave of the House to introduce two Bills to enforce the most momentous document to which the British Empire has ever affixed its seal. There are two Bills which I shall have to ask the leave of the House to introduce. It is unnecessary to obtain the ratification of Parliament to a treaty, except in one or two particulars. The ratification is for the Crown, but there are certain provisions in the Treaty of Peace [with Germany], signed last Saturday, which it is necessary to obtain an Act of Parliament in order to enforce. Therefore, I propose to ask leave to introduce a Bill in the usual form to enable His Majesty

to make such appointments, establish such offices, make such Orders in Council, and do such things as appear to him to be necessary for carrying out the said Treaty, and for giving effect to any of the provisions of the said Treaty.

That is the usual form, I believe, in which measures of this kind have hitherto been couched. It is also necessary to have an Act of Parliament in order to obtain the sanction of Parliament to the Convention between His Majesty and the President of the French Republic.<sup>1</sup> That Convention has already, I believe, been laid on the Table of the House, and, I hope, has already been circulated.

Before I say a word about the character of the Treaty, and about the purpose which animated those who negotiated it, I should like to be able to

<sup>1</sup> This was the convention to secure France against risk of invasion and was dependent on the United States assuming a like obligation. As the Senate refused to concur, the British obligation lapsed, to be supplied in part by the Locarno Pact, 1925.

say how much we all owe to the experts who assisted in the preparation of the Treaty, and my colleagues, more particularly in France, who were associated with me in its preparation. I cannot say how much I personally owe, and how much I am certain the nation owes, to the Foreign Secretary (Mr. Balfour), whose ripe experience, acute intellect, and brilliant pen have been invaluable in the preparation of the various parts of this great document. I should also like to recognize the services rendered by my right hon. Friend and colleague the Member for the Gorbals Division of Glasgow (Mr. Barnes), for the great tact with which he initiated, negotiated, and put through all the terms of that great labour charter which is now incorporated in this Treaty of Peace. I mention them particularly because, although other Ministers from time to time rendered very great assistance, these were there throughout, and devoted the whole of their time to this great task. I should like also to be able to say how much we owe to the Prime Ministers and other members of the great Dominion Governments for the assistance which they gave—Sir Robert Borden, Mr. Hughes, Mr. Massey, and General Botha. They took part in some of the most difficult Commissions, notably the territorial Commissions for the adjustment of the extraordinarily delicate and complex ethnical, economic, and strategic questions which arose between the various States throughout Europe. They, in the main, represented the British Empire on many of these most difficult Commissions. We owe a great deal to the ability and judgement with which they discharged their functions. . . .

#### GERMAN COLONIES

I come again to the Colonies. I am running rapidly through the points which have been challenged as indicating undue harshness to Germany. In some of the Colonies there is most overwhelming evidence

that Germany had cruelly ill treated the natives. If, in the face of that evidence, we had restored those Colonies to Germany—especially having regard to the part which the natives have taken in their own liberation—and thus given Germany an opportunity of affecting reprisals, it would have been a base betrayal. And it is not merely the treatment of the natives. Take the other use which Germany made of her Colonies. South-West Africa she used as a means of stirring up sedition and rebellion against the South African Colonies. The other Colonies she used as a base for preying upon the commerce of all countries in those seas. It would have been folly on our part to have restored those Colonies to Germany. We should under those conditions have widened the area of injustice in the world—it is already wide enough—and given renewed opportunities to Germany for possible future mischief.

## LEAGUE OF NATIONS

I come to the last and to the greatest guarantee of all—that is, the League of Nations. Let me say, with regard to the League of Nations, that that great and hopeful experiment is only rendered possible by the other conditions. I want the House to realize that thoroughly. Without disarmament, without the indication which this War has given that the nations of the world are determined at all costs to enforce respect for treaties, the League of Nations would be just like other Conventions in the past, something that would be blown away by the first gust of war or of any fierce dispute between the nations. It is this War, it is the Treaty that concludes this War, that will make the League of Nations possible. The world has had a great fright. We all remember what used to be said by the great military writers, and what was believed by everybody, as to the length of the next great war. It could not last longer than six weeks—three months,

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perhaps. That was the conviction of everybody at the beginning of this War—it would be very sharp but it would be short. The nations could not go on beyond a few months. That was the conviction of Germany. She would never have entered upon this War if she had known it would last so long. The world knows now that the conditions of modern warfare, with its ponderous armaments, with its trundling heavy machinery, rather conduce to lengthen war. The world is frightened. It also realizes the peril of small disputes. A little quarrel about a murder in Bosnia, and the world is aflame. There are many things the world has realized and is prepared to take into account and to provide against. This League of Nations is an attempt to do it by some less barbarous methods than war. Let us try it. I beg this country to try it seriously, and try it in earnest. It is due to mankind that we should try it. Anything except the horror of the last four and a half years! If you must come to that, well you must, but do let us try this. Take Article 12 of this Covenant:

The Members of the League—

which means the nations of the earth—

agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to inquiry.

Then I think nine months elapse. Supposing that had been in existence in 1914, it would have been difficult for Germany and Austria to have gone to War. They could not have done it, and, if they had, America would have been in on the first day and not three years afterwards, which would have made a great difference, and made all the difference. You could not have had the War in 1914 if the League of Nations had been in existence. With this machinery I am not going to say you will never have war. Man is a savage animal. You have only to go



to the field of Verdun, which is a narrow circle where about 3,000,000 of men were engaged in deadly conflict for five months and where the earth is like congealed human savagery, to see what a terrible being man is when he is roused. If it averts one war, the League of Nations will have justified itself. If you let one generation pass without the blood of millions being spilt and without the agony which fills so many homes, the League of Nations will have been justified. I beg no one to sneer at the League of Nations. Let us try it. I believe it will succeed in stopping something. It may not stop everything. The world has gone from war to war until at last we have despaired of stopping it. But society with all its organizations has not stopped every crime. What it does is that it makes crime difficult or unsuccessful, and that is what the League of Nations will do. Therefore I look to it with hope and with confidence.

## ADMISSION OF GERMANY TO LEAGUE

But they say why do not you let Germany in at once? Well, I thought a good deal about that, and if I thought it would have been better for the peace of the world I would not have minded the clamour. But I do not think it would be better for Germany either. I think you must let some time elapse. It is very difficult to forget some things. It is difficult, especially for France. It is rather difficult for us, but it is especially difficult for France. More than that, I am not sure that, if you introduced Germany now before all the questions that remain for settlement have been disposed of, you would not open up a field for intrigue, mischief, and dissension, and harm would be done. It would be a mistake, in my view, for Germany to come in immediately. The date when Germany comes in depends on herself. She can accelerate it. If she places obstacles in the way, if she shows that the same old spirit animates her,

she will put off that date. But if Germany shows that she has really broken with her past, if she shows that the fires of war have really purified her soul—if she shows at any rate that she realizes that her policy for the last 150 years was a bitter mistake, then Germany can accelerate the date. I am hoping that she will find this mistake, and that she will realize that her defeat has been her salvation, ridding her of militarism, of Junkers, and of Hohenzollerns. She has paid a big price for her deliverance. I think she will find it is worth it all. When she does, Germany will then be a fit member of the League of Nations. The sooner that comes about the better it will be for Germany and for the world.

#### ALLIES' MANDATES

With regard to the mandates for the Colonies, it was decided in the negotiations that the German Colonies should be disposed of, not by way of distributing them amongst the conquerors, but rather by way of entrusting them to great Powers to be administered in the name and on behalf of humanity, and the conditions under which these mandates were entrusted to the various countries differed according to the particular territory disposed of. For instance, South-West Africa, running as it does side by side with Cape Colony, was felt to be so much a part, geographically, of that area that it would be quite impossible to treat it in the same way as you would a colony 2,000 miles or 3,000 miles away from a centre of administration. There is no doubt at all that South-West Africa will become an integral part of the Federation of South Africa. It will be colonized by people from South Africa. You could not have done anything else. You could not have set customs barriers and have a different system of administration. The same thing applies to New Guinea, part of which is already under the administration of the Australian Com-

monwealth. You could not have had that part under one system of administration, and the next part under another. It is so near the Australian Commonwealth that it was felt that it ought to be treated as if it were part of the Australian Commonwealth. That does not apply to Togoland, the Cameroons, or German East Africa, and, therefore, there was a different system of mandate set up there. But if hon. Members will look at the conditions of the mandates they will find that they are the conditions which apply in respect of British Colonies throughout the world now—freedom of conscience and religion, prohibition of the slave trade, the arms traffic and the liquor traffic, the prevention of the establishment of fortifications or of military and naval bases, the prohibition of the military training of the natives for other than police purposes, and the defence of territory. We have never raised an army for aggressive purposes in any of these Colonies. Equal opportunities for trade and commerce—we have allowed that in all our Colonies without distinction. So that you find that the conditions of the mandate described here are the conditions which we ourselves have always applied in respect to British Colonies throughout the world. Under this mandate the responsibilities of the British Empire have been enormously increased. Something like 800,000 square miles have been added to the gigantic charge already on the shoulders of this Empire, a charge which has undoubtedly been fulfilled in a way which has won the wonder of the whole world. There have been constant references to British administration, its efficiency, its fairness, its gentleness to the natives, the manner in which it won its way, the confidence that it established everywhere—that was a common matter of observation throughout the whole of this great Conference in Paris.

## VI. THE DIPLOMATIC REPRESENTATION OF THE DOMINIONS

*Announcement in the House of Commons, Canada,  
May 10, 1920*

As a result of recent discussions an arrangement has been concluded between the British and Canadian Governments to provide more complete representation at Washington of Canadian interests than hitherto existed. Accordingly, it has been agreed that His Majesty, on advice of his Canadian ministers, shall appoint a Minister Plenipotentiary who will have charge of Canadian affairs and will at all times be the ordinary channel of communication with the United States Government in matters of purely Canadian concern, acting upon instructions from, and reporting direct to, the Canadian Government. In the absence of the Ambassador, the Canadian Minister will take charge of the whole embassy and of the representation of Imperial as well as Canadian interests.<sup>1</sup> He will be accredited by His Majesty to the President with the necessary powers for the purpose.

This new arrangement will not denote any departure either on the part of the British Government or of the Canadian Government from the principle of the diplomatic unity of the British Empire.

The need for this important step has been fully realized by both Governments for some time. For a good many years there has been direct communication between Washington and Ottawa, but the

<sup>1</sup> This part of the scheme proved unacceptable to other Dominions and was dropped when the first appointment was made in 1926-7. The right to appoint a Minister was involved in the grant to the Irish Free State of the same status as Canada by the treaty of December 6, 1921, and was exercised in 1924; see Pt. V. vi, *post*. A return appointment was not made until 1927 when the United States appointed Ministers to Ottawa and Dublin.

constantly increasing importance of Canadian interests in the United States has made it apparent that Canada should be represented there in some distinctive manner, for this would doubtless tend to expedite negotiations, and naturally first-hand acquaintance with Canadian conditions would promote good understanding. In view of the peculiarly close relations that have always existed between the people of Canada and those of the United States it is confidently expected as well that this new step will have the very desirable result of maintaining and strengthening the friendly relations and co-operation between the British Empire and the United States.



II

THE IMPERIAL CONFERENCE, 1921  
AND THE WASHINGTON CONFERENCE  
1921-2





## I. THE IMPERIAL CONFERENCE, 1921

### 1. *The Rt. Hon. D. Lloyd George, June 20, 1921*

I PROPOSE to call on Lord Curzon, on his return, to give the Conference a comprehensive survey of foreign affairs, and I will not anticipate his detailed statement now. But I should like to refer very briefly to one of the most urgent and important of foreign questions—the relations of the Empire with the United States and Japan. There is no quarter of the world where we desire more greatly to maintain peace and fair play for all nations and to avoid a competition of armaments than in the Pacific and in the Far East. Our Alliance with Japan<sup>1</sup> has been a valuable factor in that direction in the past. We have found Japan a faithful ally, who rendered us valuable assistance in an hour of serious and very critical need. The British Empire will not easily forget that Japanese men-of-war escorted the transports which brought the Australian and New Zealand forces to Europe at a time when German cruisers were still at large in the Indian and Pacific Oceans. We desire to preserve that well-tryed friendship which has stood us both in good stead, and to apply it to the solution of all questions in the Far East, where Japan has special interests, and where we ourselves, like the United States, desire equal opportunities and the open door. Not least amongst these questions is the future of China, which looks to us, as to the United States, for sympathetic treatment and fair play. No greater calamity could overtake the world than any further accentuation of the world's divisions upon the lines of race. The British Empire has done signal service

<sup>1</sup> The Alliance since 1902 had been a dominating feature of British policy, and its continuance had been approved by all the Dominions in the Imperial Conference of 1911. But Canadian feeling, influenced by the United States, was now adverse to renewal.

to humanity in bridging those divisions in the past; the loyalty of the King Emperor's Asiatic peoples is the proof. To depart from that policy, to fail in that duty, would not only greatly increase the dangers of international war; it would divide the British Empire against itself. Our foreign policy can never range itself in any sense upon the differences of race and civilization between East and West. It would be fatal to the Empire.

We look confidently to the Government and people of the United States for their sympathy and understanding in this respect. Friendly co-operation with the United States is for us a cardinal principle, dictated by what seems to us the proper nature of things, dictated by instinct quite as much as by reason and common sense. We desire to work with the great Republic in all parts of the world. Like it, we want stability and peace, on the basis of liberty and justice. Like it, we desire to avoid the growth of armaments, whether in the Pacific or elsewhere, and we rejoice that American opinion should be showing so much earnestness in that direction at the present time. We are ready to discuss with American statesmen any proposal for the limitation of armaments which they may wish to set out, and we can undertake that no such overtures will find a lack of willingness on our part to meet them. In the meantime, we cannot forget that the very life of the United Kingdom, as also of Australia and New Zealand, indeed, the whole Empire, has been built upon sea power—and that sea power is necessarily the basis of the whole Empire's existence. We have, therefore, to look to the measures which our security requires; we aim at nothing more; we cannot possibly be content with less.

\* I do not propose to deal in any detail with the agenda for this Conference to-day. We have no cut-and-dried agenda to present. We will discuss that amongst ourselves. The British Government

has been under some suspicion in some quarters of harbouring designs against this gathering as a Conference. We are said to be dissatisfied with the present state of the Empire, and to wish to alter its organization in some revolutionary way. Gentlemen, we are not at all dissatisfied. The British Empire is progressing very satisfactorily from a constitutional standpoint, as well as in other ways. The direct communication between Prime Ministers, established during the War, has, I think, worked well, and we have endeavoured to keep you thoroughly abreast of all important developments in foreign affairs by special messages sent out weekly, or even more frequently when circumstances required. Indeed, at every important Conference either here or on the Continent, one of the first duties I felt I ought to discharge was to send as full and as complete and as accurate an account as I possibly could, not merely of the decisions taken, but of the atmosphere, which counts for so very much. I have invariably, to the best of my ability, sent accounts, some of them of the most confidential character, which would give to the Dominions even the impressions which we formed, and which gave you information beyond what we could possibly communicate to the press.

Another change, which has taken place since the War, is the decision of the Canadian Government to have a Minister of its own at Washington—a very important development. We have co-operated willingly with that, and we shall welcome a Canadian colleague at Washington as soon as the appointment is made. We shall be glad to have any suggestions that occur to you as to the methods by which the business of the Dominions in London, so far as it passes through our hands, may be transacted with greater dignity and efficiency, though you will all, I think, agree that the Empire owes much to Lord Milner and Lord Long for their services

in the Colonial Office during a period of great difficulty and stress.

We shall also welcome any suggestions which you may have to make for associating yourselves more closely with the conduct of foreign relations. Any suggestions which you can make upon that subject we shall be very delighted to hear and discuss. There was a time when Downing Street controlled the Empire; to-day the Empire is in charge of Downing Street.

On all matters of common concern we want to know your standpoint, and we want to tell you ours.

I will give you my general conception of the mutual relationship in which we meet. The British Dominions and the Indian Empire, one and all, played a great part in the war for freedom, and probably a greater part than any nation, except the very greatest Powers. When the history of that struggle comes to be written, your exertions side by side with ours will constitute a testimony to British institutions such as no other Empire in history can approach or emulate. In recognition of their services and achievements in the War the British Dominions have now been accepted fully into the comity of nations by the whole world. They are signatories to the Treaty of Versailles and of all the other Treaties of Peace; they are members of the Assembly of the League of Nations, and their representatives have already attended meetings of the League; in other words, they have achieved full national status, and they now stand beside the United Kingdom as equal partners in the dignities and the responsibilities of the British Commonwealth. If there are any means by which that status can be rendered even clearer to their own communities and to the world at large we shall be glad to have them put forward at this Conference.

India's achievements were also very great. Her soldiers lie with ours in all the theatres of war, and

no Britisher can ever forget the gallantry and promptitude with which she sprang forward to the King Emperor's service when war was declared. That is no small tribute both to India and to the Empire of which India is a part. The causes of the War were unknown to India; its theatre in Europe was remote. Yet India stood by her allegiance heart and soul, from the first call to arms, and some of her soldiers are still serving far from their homes and families in the common cause. India's loyalty in that great crisis is eloquent to me of the Empire's success in bridging the civilizations of East and West, in reconciling wide differences of history, of tradition and of race, and in bringing the spirit and the genius of a great Asiatic people into willing co-operation with our own. Important changes have been effected in India this year, and India is making rapid strides towards the control of her own affairs. She has also proved her right to a new status in our councils; that status she gained during the War, and she has maintained it during the peace, and I welcome the representatives of India to our great Council of the Empire to-day. We shall, I feel sure, gain much by the fact that her sentiments and her interests will be interpreted to us here by her own representatives.

*2. The Rt. Hon. W. M. Hughes, June 20, 1921*

Now I leave foreign policy in general, and come to the Anglo-Japanese Treaty. Here we are dealing with a matter definite and urgent. It is not a thing to be settled in the future, but now. The British Government has only postponed settlement in order that the matter might be dealt with round this table. It is an urgent matter. It must be settled without delay. The attitude of Australia towards it has been quite clearly stated. We have not a clean slate before us. If we had to consider for the first time whether we should have a Treaty with Japan,

the position might be very different. We have not. For many years a Treaty has existed between Japan and Britain. Its terms have been modified, but in substance the existing Treaty has been in force for a long time. No doubt it cannot be renewed precisely in its present form. It must conform to the requirements of the League of Nations. But the case for renewal is very strong, if not indeed overwhelming. To Australia, as you will quite understand, this Treaty with Japan has special significance.

Speaking broadly, we are in favour of its renewal. But there are certain difficulties which must be faced. One of these arises out of the attitude of America towards this Treaty. I am sure I state the opinion of Australia when I say the people have a very warm corner in their hearts for America. They see in America to-day what they themselves hope to be in the future. We have a country very similar in extent and resources, and it may be laid down as a *sine qua non* that any future Treaty with Japan, to be satisfactory to Australia, must specifically exclude the possibility of a war with the United States of America. It ought to do this specifically, but if not specifically then by implication so clear and unmistakable that he who runs may read. It is perfectly true that the present Treaty does this by implication, but not so plainly as to preclude misinterpretation. In any future Treaty we must guard against even the suspicion of hostility or unfriendliness to the United States. I hope you are not forgetting, Sir, that there are many who seek to misinterpret the intentions of this country, and to confound them we must put in plain words what are our intentions. That being so, and subject to that condition—which is not a new condition at all, because Japan has accepted the position for many years—Australia is very strongly in favour of the renewal of the Treaty. As I have said, the Treaty

clearly must conform to the provisions of the League of Nations Covenant, and it must have regard to the circumstances of the world to-day, but I think it ought to be renewed; I am strongly in favour of its being renewed. I think from every point of view that it would be well that the Treaty with Japan should be renewed. Should we not be in a better position to exercise greater influence over the Eastern policy as an Ally of that great Eastern Power, than as her potential enemy? Now, if Japan is excluded from the family of great Western nations—and, mark, to turn our backs on the Treaty is certainly to exclude Japan—she will be isolated, her high national pride wounded in its most tender spot. To renew this Treaty is to impose on her some of those restraints inseparable from Treaties with other civilized nations like ourselves. We will do well for the world's peace—we will do well for China—we will do well for the Commonwealth of British nations to renew this Treaty. We want peace.

The world wants peace. Which policy is most likely to promote, to ensure, the world's peace? As I see it, the renewal of the Treaty with the Japanese Empire. Now let us consider America's objections to the renewal of the Treaty. Some of these relate to the emigration of Japanese to America; but the hostility to Japan, more or less marked, that exists in America to-day, cannot be wholly accounted for by this fact. As it is vital in the interest of civilization that a good understanding should exist between America and ourselves, we should endeavour to do everything in our power to ascertain exactly what it is to which America takes exception in this Treaty. We ought not to give her room for criticism which the world could support. We must make it perfectly clear that the Treaty is not aimed against her, and that it could never be used against her. War with America is unthinkable. As the contingency is quite an impossible one, it need not be seriously

considered. Yet it is well that the attitude of Australia should be made quite clear.

Whether it would be wiser to invite a Conference with America and Japan, to ascertain what would be mutually acceptable, is a suggestion which I throw out. If one were quite sure that America desired, or was prepared to accept, what would form a reasonable basis of an Alliance with Japan, then I certainly would strongly press the suggestion. But in any case we ought to try and ascertain precisely what America's views are on this most important matter.

Now I turn from the consideration of the Anglo-Japanese Treaty, Sir, to a question of supreme importance which you raised yesterday, and it is one which is related both to the Anglo-Japanese Treaty and to Naval Defence—I mean the question of disarmament. You said, Sir, and I am sure the world will be very glad to read those words of yours, that you would welcome any suggestion and discuss with any Power any propositions for disarmament or limitations of armaments. Your words come most opportunely. I think this is the psychological moment. We ought not to underestimate the value of this Conference—it is no use denying the fact that in America they do distinguish between England and the Dominions in a very marked way—and a suggestion coming from you backed by the Dominion Prime Ministers, might gain a hearing where the voice of England alone failed. After all, the distinction which Americans draw between us is easy to understand. History partly explains it. They see, too, in us replicas of themselves. They see us struggling and fighting towards the goal that they have already attained. And I think they are right in supposing that, subject to that determination which we have to achieve our destiny in company with each other and with Britain, we resemble so many Americas. We are free democracies. We



want peace. We at least are free from the suspicion of Imperialistic ambitions. The world, tired of war, is yet neurotic, its nervous system so disturbed by war that while it cries aloud for peace, force is the first thing to which it turns to redress its grievances. You cannot expect, you cannot hope for any more favourable moment than the present. If you fail to secure agreement for the limitation of armaments now, how can you expect to do so in the years to come? The appalling race for naval supremacy has already begun, although the fires of the Great War are not yet cold. It creates interests in the various countries where this suicidal race is run. This vicious rivalry grows by what it feeds on. Every year it becomes more difficult to stop. Speak therefore now on behalf of this gathering of Prime Ministers. Let us give the world, weary of war and staggering beneath its crushing burdens, a lead. Invite the United States of America, Japan, and France to meet us. We cannot hope that the world will beat its sword into a ploughshare, but at any rate it can stop building more ships. Let us stop naval construction and naval expenditure other than that necessary for the maintenance of existing units without prejudice to what may be agreed upon hereafter. In this matter, the first step is everything. If the world resolves to stop making any further preparations for war, everything is possible; until that step is taken, we are only beating the air.

I come now to the last point with which I intend to deal at length, and that is Naval Defence. Whatever may be agreed upon, one thing is clear, that we must have such naval defence as is adequate for our safety. Naturally the amount of force necessary to ensure our safety in a world which has agreed to suspend naval construction, a world in which the three great Naval Powers have, for example, come to such an understanding as would have the force and effect of an alliance, would be much less than

in a world which resounds with the clang of hammer beating into shape bigger and still bigger navies. That applies, too, to the renewal or non-renewal of the Anglo-Japanese Treaty, but in any case we must have such naval defence as is necessary for our security. The War and the Panama Canal has shifted the world's stage from the Mediterranean and the Atlantic to the Pacific. The stage upon which the great world drama is to be played in the future is in the Pacific. The American Navy is now in those waters. Peace in the Pacific means peace for this Empire and for the world.

With an agreement between three Great Naval Powers—or, at worst, between two—then the force necessary to defend this Empire by sea—and that it rests on sea power is certain, and I am never tired of repeating this most significant fact to those who are apt to forget how the British Empire came into being and has been maintained—would be much less. But whatever it is we must have it.

And now one word about the part of the Dominions in Empire defence. You, Sir, said some time ago that Britain had paid so dearly for victory and was groaning under such a crushing burden of debt that it could no longer alone be responsible for the defence of the Empire by sea as it had heretofore, and that the other parts of the Empire must do their share. To that doctrine I subscribe without reservation. I think it is the corollary of our admission into the councils of the Empire to determine the foreign policy. The foreign policy determined or approved by us at this Conference may lead to war. In any case the foreign policy of a nation must be limited by its power to enforce it, whether that power be wholly resident in itself, or come from an alliance, or from the League of Nations. The ambitions of men and nations are curbed by their material power. In our case, sea power is, and must always be, the determining factor of our

foreign policy. Now we cannot fairly ask for the right to decide the foreign policy of the Empire and say that we will have no part whatever in naval defence, we will not pay our share. If you ask me what is our share, I say frankly that I am not prepared at this moment to indicate it. We can do that when we come to deal with the matter in detail, but one principle seems to emerge and it is this. I do not think that our share *per capita* should be as great as Britain's share *per capita*, because Britain has Crown Colonies, and dependencies, and India to defend. But whatever is our fair share should be borne upon a *per capita* basis by all the Dominions. That, I think, is the only fair and proper basis. If the converse be conceded for a moment, and some pay more *per capita* than others, then I do not understand the basis of union amongst us. Dangers to the Empire or to any part of it are to be met surely by unity of action. That is at once the principle upon which the Empire rests, and upon which its security depends. The Dominions could not exist if it were not for the British Navy. We must not forget this. We are a united Empire or we are nothing. Now who is to say from what quarter dangers will come to any of us? It comes now from the East and to-morrow from the West. But from whatever quarter it comes we meet it as a united Empire, the whole of our strength is thrown against the danger which threatens us. If some Dominions say 'we are not in any danger, you are, you pay; we will not, or cannot, contribute towards naval defence', an impossible position is created. I cannot subscribe to such a doctrine. It is incompatible with the circumstances of our relationship to Britain and to each other, it menaces our safety and our very existence, it is a negation of our unity.

I need hardly say that I do not believe that the Dominion quota for naval defence should be expressed in terms of a money contribution, but in

terms of Dominion Navies. This is a point upon which the Admiralty has expressed itself very strongly, and the suggestion of monetary contribution is not to be seriously considered. In any case, we shall be able to discuss the matter when naval defence is being dealt with.

I have nothing further to say on those matters to which you referred yesterday, but reference to one other point may be permitted. It is well that we should know each other's views. We ought not to discuss things in the dark. It has been suggested that a Constitutional Conference should be held next year. It may be that I am very dense, but I am totally at a loss to understand what it is that this Constitutional Conference proposes to do. Is it that the Dominions are seeking new powers, or are desirous of using powers they already have, or is the Conference to draw up a declaration of rights, to set down in black and white the relations between Britain and the Dominions? What is this Conference to do? What is the reason for calling it together? I know, of course, the Resolution of the 1917 Conference. But much water has run under the bridge since then. Surely this Conference is not intended to limit the rights we now have. Yet what new right, what extension of power can it give us? What is there that we cannot do now? What could the Dominions do as independent nations that they cannot do now? What limitation is now imposed upon them? What can they not do, even to encompass their own destruction by sundering the bonds that bind them to the Empire? What yet do they lack? Canada has asserted her right to make treaties. She has made treaties. She is asserting her right to appoint an Ambassador at Washington. Are these the marks of Slave States, or quasi-sovereignty? In what essential thing does any one of the great self-governing Dominions differ from independent nations? It is true there is a sentiment, a fignent,

a few ancient forms: there is what Sir F. Pollock calls the figment of the right of the British Parliament to make laws affecting the Dominions. Supposing the British Parliament should make a law to-morrow which would take from me the very position in which I stand, namely, a representative of a Parliament that exists and was brought into being by a British Statute. I suppose that would apply to you General Smuts, and to you, Mr. Meighen. They could pass that law, and although we might be here as individuals, so far as legal or constitutional status is concerned we should have ceased to exist. But, as Sir F. Pollock says, this power of the British Parliament is a figment, a shadow. Either it must limit our rights of self-government, or it must weaken the bonds of Empire, or it must simply content itself with asserting rights and privileges and responsibilities that are ours already and that none question. In effect, we have all the rights of self-government enjoyed by independent nations. That being the position, what is the Constitutional Conference going to do? The proposal to hold a Constitutional Conference is causing considerable anxiety, at any rate in Australia. So far from anticipating that it is to give us greater power, some fear it will take away some of the powers that we have, and my difficulty is, and has been, to try and allay those doubts, which are very strongly held. I think every one of us is confronted with the same position. I think even this Conference is surrounded with clouds of suspicion. Our right to a name is in question. If we call ourselves a Conference it is wrong: if we call ourselves a Cabinet it is wrong—a Council is still worse. I am sure between General Smuts and myself there is, in fact, very little difference, if any. But, nevertheless, I say that we are treading on very dangerous ground, and I say this to him. We have achieved this wonderful progress—and it is wonderful progress—along certain lines. Is he

not satisfied with the progress we have made? The difference between the status of the Dominions now and twenty-five years ago is very great. We were Colonies, we became Dominions. We have been accorded the status of nations. Our progress in material greatness has kept pace with our constitutional development. Let us leave well alone. That is my advice. We have now on the agenda paper matters which mark a new era in Empire government. We, the representatives of the Dominions, are met together to formulate a foreign policy for the Empire. What greater advance is conceivable? What remains to us? We are like so many Alexanders. What other worlds have we to conquer? I do not speak of Utopias nor of shadows, but of solid earth. I know of no power that the Prime Minister of Britain has, that General Smuts has not. Our presence here round this table, the agenda paper before us, the basis of equality on which we meet, these things speak in trumpet tones that this Conference of free democratic nations is, as Mr. Lloyd George said yesterday, a living force.

### 3. *The Rt. Hon. J. C. Smuts, June 20, 1921*

Armaments depend upon policy, and therefore I press very strongly that our policy should be such as to make the race for armaments impossible. That should be the cardinal feature of our foreign policy. We should not go into the future under this awful handicap of having to support great armaments, build new fleets, raise new armies, whilst our economic competitors are free of that liability under the Peace Treaty. The most fatal mistake of all, in my humble opinion, would be a race of armaments against America. America is the nation that is closest to us in all the human ties. The Dominions look upon her as the oldest of them. She is the relation with whom we most closely agree, and with whom we can most cordially work together. She

left our circle a long time ago because of a great historic mistake. I am not sure that a wise policy after the great events through which we have recently passed might not repair the effects of that great historic error, and once more bring America on to lines of general co-operation with the British Empire. America, after all, has proved a staunch and tried friend during the War. She came in late because she did not realize what was at stake. In the very darkest hour of the War she came in and ranged herself on our side. That was, I believe, the determining factor in the victory of our great cause.

Since the War we have somewhat drifted apart. I need not go into the story—I do not know the whole story—it is only known to you here. There are matters on which we have not seen eye to eye, to some extent springing from what happened at Paris and also from mistakes made by statesmen. But these mistakes do not affect the fundamental attitude of the two peoples. To my mind it seems clear that the only path of safety for the British Empire is a path on which she can walk together with America. In saying this I do not wish to be understood as advocating an American alliance. Nothing of the kind. I do not advocate an alliance or any exclusive arrangement with America. It would be undesirable, it would be impossible and unnecessary. The British Empire is not in need of exclusive allies. It emerged from the War quite the greatest Power in the world, and it is only unwisdom or unsound policy that could rob her of that great position. She does not want exclusive alliances. What she wants to see established is more universal friendship in the world. The nations of the British Empire wish to make all the nations of the world more friendly to each other. We wish to remove grounds for misunderstandings and causes of friction, and to bring together all the free peoples of the world in a system of friendly conferences and

consultations in regard to their difficulties. We wish to see a real Society of Nations, away from the old ideas and practices of national domination or Imperial domination, which were the real root causes of the great War. No, not in alliances, in any exclusive alliances, but in a new spirit of amity and co-operation do we seek the solution of the problems of the future. Although America is not a member of the League of Nations, there is no doubt that co-operation between her and the British Empire would be the easy and natural thing, and there is no doubt it would be the wise thing. . . .

There is one chapter in that [Peace] Treaty which, to my mind, should be specially sacred to the British Empire. That is the first chapter on the League of Nations. The Covenant may be faulty, it may need amendment in order to make it more workable and more generally acceptable, but let us never forget that the Covenant embodies the most deeply-felt longings of the human race for a better life. There, more than anywhere else, do we find a serious effort made to translate into practical reality the great ideals that actuated us during the War, the ideals for which millions of our best gave their lives. The method of understanding instead of violence, of free co-operation, of consultation and conference in all great difficulties which we have found so fruitful in our Empire system, is the method which the League attempts to apply to the affairs of the world. Let us, in the British Empire, back it for all it is worth. It may well prove, for international relations, the way out of the present morass. It may become the foundation of a new international system which will render armaments unnecessary, and give the world at large the blessings which we enjoy in our lesser League of Nations in the Empire.

I have spoken at length already, Prime Minister, and therefore I do not wish to refer to the other great matter which we are met here to consider, and



which Mr. Hughes touched upon, namely, constitutional relations. We shall come to a very full discussion of that subject, and, therefore, I do not wish to say any more at this stage.

4. *The Rt. Hon. W. C. Massey, June 20, 1921*

Ever since the signatures of the representatives of the Dominions were attached to the Peace Treaty at Versailles on 28th June, 1919, there has been a feeling on the part of many intelligent men and women that the future of the Empire may possibly have been endangered thereby. What I mean is this, that I have seen it stated repeatedly, as a result of the signing of the Peace Treaty, which, of course, included the Covenant of the League of Nations, the Dominions of the Empire had acquired complete independence, and, in case of the Empire being involved in war—which I say heaven forbid, and I say it with all my heart and soul—any one of the Dominions might refrain from taking part or assisting the Empire in any way. I do not agree with that view, and I go upon the principle that when the King, the Head of the State, declares war the whole of his subjects are at war, and that must be the case if some of the best constitutional authorities are right. That is one of the causes of anxiety at the present time. There is the other as a logical sequence of the first, that any Dominion—I won't say Dependencies, Dependencies are in a different position—but any Dominion may, on account of what has taken place, enter into a treaty with any foreign country irrespective of what the Empire as a whole may do. I am not now referring to a treaty entered into for commercial purposes, that is quite another matter. As I understand the position, any Dominion may make a commercial arrangement with any foreign country, but the treaties of which I am thinking and of which many other people are thinking are treaties involving war or peace or

foreign policy, as the case may be. These latter are the treaties which, I understand, in existing circumstances, a Dominion has not the right to enter into.

I think we are in a dangerous position—a position which may bring friction in a year or two's time or in the years to come. I think it should be faced now, and we should arrive at an understanding as to exactly where we are. There is another point. The Imperial War Cabinet has been referred to on a number of occasions to-day and yesterday, and I read with a great deal of interest an article by Lord Milner in one of the papers yesterday morning, I think *The Times*. I may say I agree thoroughly with the opinion expressed by Lord Milner in regard to the Imperial War Cabinet. I believe it did magnificent work, and I hoped that it would become a permanent institution, modified, of course, as required by a period of peace. The Imperial War Cabinet was suitable for a period of war. I do not mean to say we should go on the same lines. We are here to-day, and I think I am right in saying we do not even know what to call ourselves, and there is a great deal in a name. A Conference means consultation and consultation only, but a Cabinet also carries with it the right to recommend some definite course to the Sovereign. Of course, behind it all there is the responsibility on the part of each representative of the Dominions particularly, or even of the United Kingdom, to the Parliaments behind us; we must take the responsibility of our actions; but I think most of us, all of us, here to-day are experienced politicians, and I am quite sure that we are not likely to go too far. There is another difficulty. The representatives of the Dominions and India meet the representatives of the United Kingdom in conference, but we have no right to join in any recommendation that may be made to the Sovereign in regard to any course which requires his assent and which may be thought desirable.

Now, I am not anxious about this. I have absolute confidence in the good sense of British people and British statesmen, but still there is the anomaly. There is something there that wants to be put right. Using a term which is often used, it is not democratic. I do not know whether these matters can be discussed and dealt with during the present Conference, and I am calling it a Conference for want of a better name. What I object to is what the name Conference implies. I do not know whether we are able to deal with it during the term of the present Conference, or whether we are not, but I do think the matter should be settled, and not left over indefinitely. We sometimes talk about what we have gained in recent years, and we have gained a great deal. There is no question about that. We have gained in status and in other ways. We stand in quite a different position from that in which the Dominions and Dependencies of the Empire, including India, stood ten years ago, but we have gone back as compared with what was the case two years ago when the Imperial War Cabinet was in existence.

MR. HUGHES: I do not quite follow where we have gone back.

MR. MASSEY: We have lost the right which we had then on war matters, and even other matters, to assist in making a recommendation to the Sovereign, the Head of the State, in regard to any course of action which we thought desirable and which required his assent. I may be wrong in the view I take, but I feel so strongly about it, and I have discussed it with my colleagues in New Zealand, though I have not mentioned it in Parliament except by way of a brief hint. I went no further with my own Parliament, but I would not be justified in allowing this Conference to pass without bringing it up. I may say that I believe thoroughly and strongly in the partnership of nations. It does not matter what you call it—a family of nations, a Commonwealth

of Nations, or anything else, so long as the partnership is applied. I believe thoroughly and firmly in that; but even a partnership of nations, any more than a nation, cannot stand still. We must either progress or decay. There is no question about that, and I hope those who are entrusted with the management of the public affairs of the Empire itself, and of the countries of the Empire, will see that no decay takes place. There is one point I must acknowledge in this connexion, and it is this. While I have called attention to the anomaly, I admit, and am thoroughly of opinion, that there is a far stronger power in the British Empire to-day than any words that may be placed upon paper, either printed or written—that is, the sentiments of the British people, the patriotic sentiments of the British people. I am not merely speaking of Anglo-Saxons or Europeans, or any one race. I am speaking of the British people right through the Empire, including the native races. You cannot go beyond sentiment. And I am quite sure that as soon as they understand what is taking place or its possibility, if only its possibility, they will see that these matters, which may appear small at the time, are rectified without waiting too long.

5. *The Hon. Srinivasa Sastri, June 20, 1921*

There is another subject of great importance which I must mention—that is the status enjoyed by Indians in the Dominions of the British Empire. In noble words you described this Empire, Sir, as a Confederation of Races into which willing and free peoples had been admitted—willing and free peoples; consent is incongruous with inequality of races, and freedom necessarily implies admission of all people to the rights of citizenship without reservation. In impressive and far-seeing words the Prime Minister of South Africa alluded to the establishment of everlasting peace. Peace means a stable and unalterable

relationship between communities—based on honourable equality and recognition of equality of status. To embody this ideal, there are deductions from it now in actual practice; we are going to submit, I mean our Indian Delegation, for the consideration of this Cabinet, a resolution, the terms of which I understand have already been communicated to you. This is a resolution that will be regarded in India as the test by which the whole position must be judged. I won't say more than that. It is of supreme importance that that subject should be considered and disposed of satisfactorily at this meeting, and it is of the most urgent and pressing importance that we should be enabled to carry back a message of hope and of good cheer. There is no conviction more strongly in our minds than this, that a full enjoyment of citizenship within the British Empire applies, not only to the United Kingdom, but to every self-governing Dominion within its compass. We have already, Sir, as you are aware, agreed to a subtraction from the integrity of the rights of the compromise of 1918 to which my predecessor, Lord Sinha, was a party, that each Dominion and each self-governing part of the Empire should be free to regulate the composition of its population by suitable immigration laws. On that compromise there is no intention whatever to go back, but we plead on behalf of those who are already fully domiciled in the various self-governing Dominions according to the laws under which those Dominions are governed—to these people there is no reason whatever to deny the full rights of citizenship, it is for them that we plead; where they are lawfully settled, they must be admitted into the general body of citizenship and no deduction must be made from the rights that other British subjects enjoy. It is my unfortunate part to have drawn prominent attention to what we consider a great defect in the present arrangements. It may seem to

be of comparatively trifling importance to the other issues we have to consider. I only plead that there should be no occasion for small bickerings, no occasion for mutual recriminations amongst us. We have great tasks. Let little things be got out of the way. I only wish that all our common energies should be bent towards realizing more and more within the Empire, and extending further and further outside the British Empire those generous ideals of progress to which, Sir, you gave such inspiring and, if I may say so, such alluring expression yesterday.

#### 6. *Resolutions IX and XIV*

##### IX. POSITION OF BRITISH INDIANS IN THE EMPIRE

The question of the position of British Indians in the Empire was discussed first at a plenary meeting when the representatives of India fully explained the situation and the views held in India on the subject. The question was then remitted to a special Committee under the chairmanship of the Secretary of State for the Colonies. At a final meeting on the subject the following Resolution was adopted:

'The Conference, while reaffirming the Resolution of the Imperial War Conference of 1918,<sup>1</sup> that each community of the British Commonwealth should enjoy complete control of the composition of its own population by means of restriction on immigration from any of the other communities, recognizes that there is an incongruity between the position of India as an equal member of the British Empire and the existence of disabilities upon British Indians lawfully domiciled in some other parts of the Empire. The Conference accordingly is of the opinion that in the interests of the solidarity of the British Commonwealth, it is desirable that the rights of such Indians to citizenship should be recognized.

<sup>1</sup> *pro ante.*

'The representative of South Africa regret their inability to accept this resolution in view of the exceptional circumstances of the greater part of the Union.

'The representatives of India, while expressing their appreciation of the acceptance of the resolution recorded above, feel bound to place on record their profound concern at the position of Indians in South Africa, and their hope that by negotiation between the Governments of India and of South Africa, some way can be found, as soon as may be, to reach a more satisfactory position.'

#### XIV. THE PROPOSED CONFERENCE ON CONSTITUTIONAL RELATIONS

Several plenary meetings and several meetings of the Prime Ministers were devoted to a consideration of the question of the proposed Conference on the Constitutional relations of the component parts of the Empire,<sup>1</sup> and the following Resolution was adopted:

'The Prime Ministers of the United Kingdom and the Dominions, having carefully considered the recommendation of the Imperial War Conference of 1917 that a special Imperial Conference should be summoned as soon as possible after the War to consider the constitutional relations of the component parts of the Empire, have reached the following conclusions:

- '(a) Continuous consultation, to which the Prime Ministers attach no less importance than the Imperial War Conference of 1917, can only be secured by a substantial improvement in the communications between the component parts of the Empire. Having regard to the constitutional developments since 1917, no advantage is to be gained by holding a constitutional Conference.

<sup>1</sup> See Resolution IX printed at p. 5 of Cd. 8566; *British Colonial Policy*, ii. 376.

- '(b) The Prime Ministers of the United Kingdom and the Dominions and the Representatives of India should aim at meeting annually, or at such longer intervals as may prove feasible.
- '(c) The existing practice of direct communication between the Prime Ministers of the United Kingdom and the Dominions, as well as the right of the latter to nominate Cabinet Ministers to represent them in consultation with the Prime Minister of the United Kingdom, are maintained.'



## II. THE WASHINGTON CONFERENCE ON LIMITATION OF ARMAMENTS, 1921-2

1. *Treaty between the British Empire, France, Japan, and the United States of America relating to their Insular Possessions and Insular Dominions in the Pacific Ocean.*—Washington, December 13, 1921

[Ratifications exchanged at Washington, August 17, 1923.]

THE United States of America, the British Empire, France, and Japan,

With a view to the preservation of the general peace and the maintenance of their rights in relation to their insular possessions and insular dominions in the region of the Pacific Ocean;

Have determined to conclude a Treaty to this effect and have appointed as their Plenipotentiaries:

The President of the United States of America:<sup>1</sup>

...  
His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India: The Right Honourable Arthur James Balfour, O.M., M.P., Lord President of His Privy Council; . . . and

for the Dominion of Canada: The Right Honourable Sir Robert Laird Borden, G.C.M.G., K.C.;

for the Commonwealth of Australia: The Honourable George Foster Pearce, Minister of Defence;

for the Dominion of New Zealand: Sir John William Salmond, K.C., Judge of the Supreme Court of New Zealand;

for the Union of South Africa: The Right Honourable Arthur James Balfour, O.M., M.P.;

for India: The Right Honourable Valingman Sankaranarayana Srinivasa Sastri, Member of the Indian Council of State;

<sup>1</sup> Names of plenipotentiaries omitted.

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The President of the French Republic: . . .

His Majesty the Emperor of Japan: . . .

Who, having communicated their full powers, found in good and due form, have agreed as follows:

I

The High Contracting Parties agree as between themselves to respect their rights in relation to their insular possessions and insular dominions in the region of the Pacific Ocean.

If there should develop between any of the High Contracting Parties a controversy arising out of any Pacific question and involving their said rights which is not satisfactorily settled by diplomacy and is likely to affect the harmonious accord now happily subsisting between them, they shall invite the other High Contracting Parties to a joint Conference to which the whole subject will be referred for consideration and adjustment.

II

If the said rights are threatened by the aggressive action of any other Power, the High Contracting Parties shall communicate with one another fully and frankly in order to arrive at an understanding as to the most efficient measures to be taken, jointly or separately, to meet the exigencies of the particular situation.

III

This Treaty shall remain in force for ten years from the time it shall take effect, and after the expiration of said period it shall continue to be in force subject to the right of any of the High Contracting Parties to terminate it upon twelve months' notice.

IV

This Treaty shall be ratified as soon as possible in accordance with the constitutional methods of the

High Contracting Parties and shall take effect on the deposit of ratifications, which shall take place at Washington, and thereupon the agreement between Great Britain and Japan, which was concluded at London on the 13th July, 1911, shall terminate. The Government of the United States will transmit to all the Signatory Powers a certified copy of the *procès-verbal* of the deposit of ratifications.

The present Treaty, in French and in English, shall remain deposited in the archives of the Government of the United States, and duly certified copies thereof will be transmitted by that Government to each of the Signatory Powers.

*Declaration accompanying the Treaty of December 13, 1921, between the British Empire, France, Japan, and the United States of America, relating to their Insular Possessions and Insular Dominions in the Pacific Ocean.—Washington, December 13, 1921.*

In signing the Treaty this day between the United States of America, the British Empire, France, and Japan, it is declared to be the understanding and intent of the Signatory Powers:

1. That the Treaty shall apply to the Mandated Islands in the Pacific Ocean; provided, however, that the making of the Treaty shall not be deemed to be an assent on the part of the United States of America to the mandates and shall not prelude agreements between the United States of America and the Mandatory Powers respectively in relation to the mandated islands.<sup>1</sup>

2. That the controversies to which the second paragraph of Article I refers shall not be taken to embrace questions which according to principles of international law lie exclusively within the domestic jurisdiction of the respective Powers.

Washington, D.C., 13th December, 1921.

<sup>1</sup> Such agreements were subsequently concluded.

*Protocol of Deposit of Ratifications of the Treaty between the British Empire, France, Japan, and the United States of America, relating to their Insular Possessions and Insular Dominions in the Pacific Ocean, concluded at Washington, December 13, 1921.*

In conformity with Article 4 of the Treaty between the United States of America, the British Empire, France, and Japan, relating to their insular possessions and insular dominions in the region of the Pacific Ocean, concluded at Washington on 13th December, 1921, the undersigned representatives of the United States of America, the British Empire, France, and Japan, this day met at the Department of State at Washington, to proceed with the deposit with the Government of the United States of America of the instruments of ratification of the said Treaty by the Governments they represent.

The representative of the United States of America declared that the instrument of ratification of the United States is deposited with the reservation and understanding, recited in the ratification, that—

The United States understands that under the statement in the preamble or under the terms of this treaty there is no commitment to armed force, no alliance, no obligation to join in any defence.

The instruments of ratification produced, having been found upon examination to be in due form, are entrusted to the Government of the United States of America to be deposited in the archives of the Department of State.

In witness whereof, the present *procès-verbal*, of which a certified copy will be sent by the Government of the United States of America to each one of the Powers signatory to the said Treaty, is signed.

2. *The Treaty for the Limitation of Naval Armament,  
Washington, February 6, 1922*

Article IV.

The total capital ship replacement tonnage of each of the Contracting Powers shall not exceed in standard displacement, for the, United States, 525,000 tons (533,400 metric tons); for the British Empire, 525,000 tons (533,400 metric tons); for France, 175,000 tons (177,800 metric tons); for Italy, 175,000 tons (177,800 metric tons); for Japan, 315,000 tons (320,040 metric tons).

Article V.

No capital ship exceeding 35,000 tons (35,560 metric tons) standard displacement shall be acquired by, or constructed by, for, or within the jurisdiction of, any of the Contracting Powers.

Article VI.

No capital ship of any of the Contracting Powers shall carry a gun with a calibre in excess of 16 inches (406 millimetres).

Article XI.

No vessel of war exceeding 10,000 tons (10,160 metric tons) standard displacement, other than a capital ship or aircraft carrier, shall be acquired by, or constructed by, for, or within the jurisdiction of, any of the Contracting Powers. Vessels not specifically built as fighting ships nor taken in time of peace under Government control for fighting purposes, which are employed on fleet duties or as troop transports or in some other way for the purpose of assisting in the prosecution of hostilities otherwise than as fighting ships, shall not be within the limitations of this Article.

## Article XII.

No vessel of war of any of the Contracting Powers, hereafter laid down, other than a capital ship, shall carry a gun with a calibre in excess of 8 inches (203 millimetres).

## Article XIX.

The United States, the British Empire, and Japan agree that the *status quo* at the time of the signing of the present Treaty, with regard to fortifications and naval bases, shall be maintained in their respective territories and possessions specified hereunder:

1. The insular possessions which the United States now holds or may hereafter acquire in the Pacific Ocean, except (a) those adjacent to the coast of the United States, Alaska, and the Panama Canal Zone, not including the Aleutian Islands, and (b) the Hawaiian Islands;

2. Hong Kong and the insular possessions which the British Empire now holds or may hereafter acquire in the Pacific Ocean, east of the meridian of 110° east longitude, except (a) those adjacent to the coast of Canada, (b) the Commonwealth of Australia and its territories, and (c) New Zealand;

3. The following insular territories and possessions of Japan in the Pacific Ocean, to wit: the Kurile Islands, the Bonin Islands, Amami-Oshima, the Loochoo Islands, Formosa, and the Pescadores, and any insular territories or possessions in the Pacific Ocean which Japan may hereafter acquire.

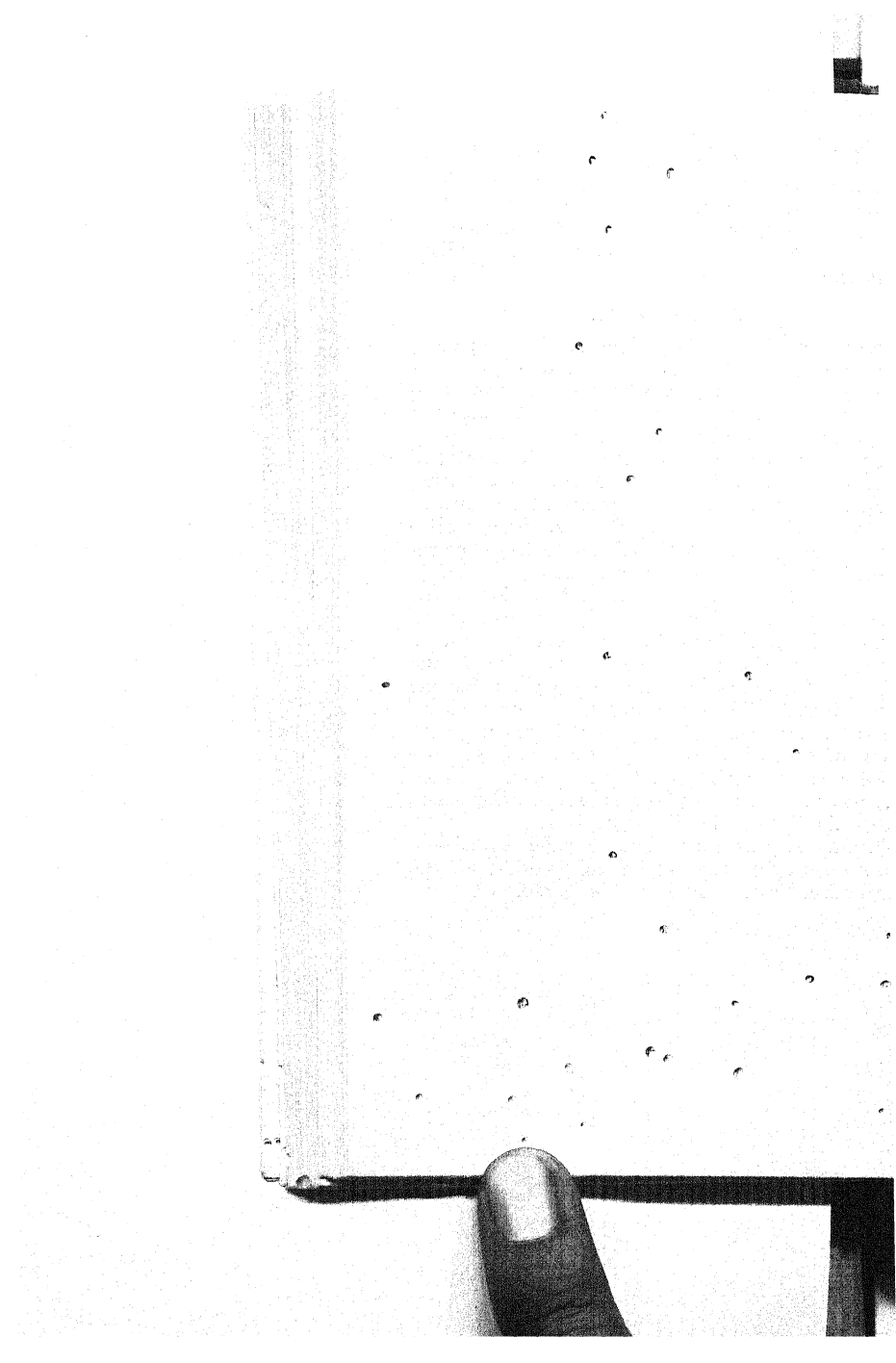
The maintenance of the *status quo* under the foregoing provisions implies that no new fortifications or naval bases shall be established in the territories and possessions specified; that no measures shall be taken to increase the existing naval facilities for the repair and maintenance of naval forces, and that no increase shall be made in the coast defences of the

territories and possessions above specified. This restriction, however, does not preclude such repair and replacement of worn-out weapons and equipment as is customary in naval and military establishments in time of peace.

#### Article XXIII.

The present Treaty shall remain in force until the 31st December, 1936, and in case none of the Contracting Powers shall have given notice two years before that date of its intention to terminate the Treaty, it shall continue in force until the expiration of two years from the date on which notice of termination shall be given by one of the Contracting Powers, whereupon the Treaty shall terminate as regards all the Contracting Powers. Such notice shall be communicated in writing to the Government of the United States, which shall immediately transmit a certified copy of the notification to the other Powers and inform them of the date on which it was received. The notice shall be deemed to have been given and shall take effect on that date. In the event of notice of termination being given by the Government of the United States, such notice shall be given to the diplomatic representatives at Washington of the other Contracting Powers, and the notice shall be deemed to have been given and shall take effect on the date of the communication made to the said diplomatic representatives.

Within one year of the date on which a notice of termination by any Power has taken effect, all the Contracting Powers shall meet in conference.





III

THE ESTABLISHMENT OF THE IRISH  
FREE STATE AND THE ENACTMENT  
OF ITS CONSTITUTION



1. *Articles of Agreement for a Treaty between Great Britain and Ireland, December 6, 1921*

1. IRELAND shall have the same constitutional status in the Community of Nations known as the British Empire as the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, and the Union of South Africa, with a Parliament having Powers to make laws for the peace order and good Government of Ireland and an Executive responsible to that Parliament, and shall be styled and known as the Irish Free State.

2. Subject to the provisions hereinafter set out the position of the Irish Free State in relation to the Imperial Parliament and Government and otherwise shall be that of the Dominion of Canada, and the law, practice, and constitutional usage governing the relationship of the Crown or the representative of the Crown and of the Imperial Parliament to the Dominion of Canada shall govern their relationship to the Irish Free State.

3. The representative of the Crown in Ireland shall be appointed in like manner as the Governor-General of Canada and in accordance with the practice observed in the making of such appointments.

4. The oath to be taken by Members of the Parliament of the Irish Free State shall be in the following form:

I . . . do solemnly swear true faith and allegiance to the Constitution of the Irish Free State as by law established and that I will be faithful to H.M. King George V, his heirs and successors by law, in virtue of the common citizenship of Ireland with Great Britain and her adherence to and membership of the group of nations forming the British Commonwealth of Nations.

5. The Irish Free State shall assume liability for the service of the Public Debt of the United Kingdom as existing at the date hereof and towards the payment of war pensions as existing at that date in such proportion as may be fair and equitable, having regard to any just claims on the part of Ireland by way of set off or counter-claim, the amount of such sums being determined in default of agreement by the arbitration of one or more independent persons being citizens of the British Empire.<sup>1</sup>

6. Until an arrangement has been made between the British and Irish Governments whereby the Irish Free State undertakes her own coastal defence, the defence by sea of Great Britain and Ireland shall be undertaken by His Majesty's Imperial Forces. But this shall not prevent the construction or maintenance by the Government of the Irish Free State of such vessels as are necessary for the protection of the Revenue or the Fisheries.

The foregoing provisions of this Article shall be reviewed at a Conference of Representatives of the British and Irish Governments to be held at the expiration of five years from the date<sup>2</sup> hereof with a view to the undertaking by Ireland of a share in her own coastal defence.

7. The Government of the Irish Free State shall afford to His Majesty's Imperial Forces:

- (a) In time of peace such harbour and other facilities as are indicated in the Annex hereto, or such other facilities as may from time to time be agreed between the British Government and the Government of the Irish Free State; and
- (b) In time of war or of strained relations with a Foreign Power such harbour and other facilities as the British Government may require for the purposes of such defence as aforesaid.

<sup>1</sup> Cancelled in 1925; see p. 137, *post*.

<sup>2</sup> No such Conference was held up to 1931.

8. With a view to securing the observance of the principle of international limitation of armaments, if the Government of the Irish Free State establishes and maintains a military defence force, the establishments thereof shall not exceed in size such proportion of the military establishments maintained in Great Britain as that which the population of Ireland bears to the population of Great Britain.

9. The ports of Great Britain and the Irish Free State shall be freely open to the ships of the other country on payment of the customary port and other dues.

10. The Government of the Irish Free State agrees to pay fair compensation on terms not less favourable than those accorded by the Act of 1920 to judges, officials, members of Police Forces, and other Public Servants who are discharged by it or who retire in consequence of the change of government effected in pursuance hereof:<sup>1</sup>

Provided that this agreement shall not apply to members of the Auxiliary Police Force or to persons recruited in Great Britain for the Royal Irish Constabulary during the two years next preceding the date hereof. The British Government will assume responsibility for such compensation or pensions as may be payable to any of these excepted persons.

11. Until the expiration of one month from the passing of the Act of Parliament for the ratification of this instrument, the powers of the Parliament and the Government of the Irish Free State shall not be exercisable as respects Northern Ireland and the provisions of the Government of Ireland Act, 1920, shall, so far as they relate to Northern Ireland remain of full force and effect, and no election shall be held for the return of members to serve in the

<sup>1</sup> This section led to litigation: *Wigg and Cochrane v. A. G. of Irish Free State*, [1927] A.C. 674; *Irish Civil Servants, In re*, [1929] A.C. 242; and was interpreted and supplemented on June 27, 1929, confirmed by 20 Geo. 5, c. 4, and Irish legislation.

Parliament of the Irish Free State for constituencies in Northern Ireland, unless a resolution is passed by both Houses of the Parliament of Northern Ireland in favour of the holding of such elections before the end of the said month.

12. If before the expiration of the said month, an address is presented to His Majesty by both Houses of the Parliament of Northern Ireland to that effect, the powers of the Parliament and Government of the Irish Free State shall no longer extend to Northern Ireland, and the provisions of the Government of Ireland Act, 1920 (including those relating to the Council of Ireland), shall, so far as they relate to Northern Ireland, continue to be of full force and effect, and this instrument shall have effect subject to the necessary modifications.<sup>1</sup>

Provided that if such an address is so presented a Commission consisting of three persons, one to be appointed by the Government of the Irish Free State, one to be appointed by the Government of Northern Ireland, and one who shall be Chairman to be appointed by the British Government, shall determine in accordance with the wishes of the inhabitants, so far as may be compatible with economic and geographic conditions, the boundaries between Northern Ireland and the rest of Ireland, and for the purposes of the Government of Ireland Act, 1920, and of this instrument, the boundary of Northern Ireland shall be such as may be determined by such Commission.

13. For the purpose of the last foregoing Article, the powers of the Parliament of Southern Ireland under the Government of Ireland Act, 1920, to elect members of the Council of Ireland shall after the Parliament of the Irish Free State is constituted be exercised by that Parliament.

<sup>1</sup> The necessary address was duly presented, and a Commission appointed, but the boundary issue was disposed of by agreement of December 3, 1925. See p. 137, *post*.

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16. Neither the Parliament of the Irish Free State nor the Parliament of Northern Ireland shall make any law so as either directly or indirectly to endow any religion or prohibit or restrict the free exercise thereof or give any preference or impose any disability on account of religious belief or religious status or affect prejudicially the right of any child to attend a school receiving public money without attending the religious instruction at the school or make any discrimination as respects state aid between schools under the management of different religious denominations or divert from any religious denomination or any educational institution any of its property except for public utility purposes and on payment of compensation.

17. By way of provisional arrangement for the administration of Southern Ireland during the interval which must elapse between the date hereof and the constitution of a Parliament and Government of the Irish Free State in accordance therewith, steps shall be taken forthwith for summoning a meeting of members of Parliament elected for constituencies in Southern Ireland since the passing of the Government of Ireland Act, 1920, and for constituting a provisional Government, and the British Government shall take the steps necessary to transfer to such provisional Government the powers and machinery requisite for the discharge of its duties, provided that every member of such provisional Government shall have signified in writing his or her acceptance of this instrument. But this arrangement shall not continue in force beyond the expiration of twelve months from the date hereof.

18. This instrument shall be submitted forthwith by His Majesty's Government for the approval of Parliament and by the Irish signatories to a meeting summoned for the purpose of the members elected to sit in the House of Commons of Southern Ireland,

and if approved shall be ratified by the necessary legislation.

(Signed)

On behalf of the British  
Delegation.

(Signed)

D. LLOYD GEORGE.

AUSTEN CHAMBERLAIN.

BIRKENHEAD.

WINSTON S. CHURCHILL.

L. WORTHINGTON-EVANS.

HAMAR GREENWOOD.

GORDON HEWART.

On behalf of the Irish  
Delegation.

(Signed)

ART O GRIOBHTHA.

(Arthur Griffith).

MÍCHAÉL O COILEÁIN.

RÍOBÁRD BARTÚN.

EUDHMÓN S.

O'DUGÁIN.

SEÓRSA GHABHÁIN Uí  
DHUBHTHAIGH.

December 6, 1921.

#### ANNEX

1. The following are the specific facilities required.

##### DOCKYARD, PORT AT BEREHAVEN

(a) Admiralty property and rights to be retained as at the date hereof. Harbour defences to remain in charge of British care and maintenance parties.

##### QUEENSTOWN

(b) Harbour defences to remain in charge of British care and maintenance parties. Certain mooring buoys to be retained for use of His Majesty's ships.

##### BELFAST LOUGH

(c) Harbour defences to remain in charge of British care and maintenance parties.

##### LOUGH SWILLY

(d) Harbour defences to remain in charge of British care and maintenance parties.

##### AVIATION

(e) Facilities in the neighbourhood of the above ports for coastal defence by air.



## OIL FUEL STORAGE

- |                 |   |  |
|-----------------|---|--|
| (f) Haulbowline | { | To be offered for sale to commercial companies under guarantee that purchases shall maintain a certain minimum stock for Admiralty purposes. |
| Rathmullen      |   |  |

2. A Convention shall be made between the British Government and the Government of the Irish Free State to give effect to the following conditions:

(a) That submarine cables shall not be landed or wireless stations for communication with places outside Ireland be established except by agreement with the British Government; that the existing cable landing rights and wireless concessions shall not be withdrawn except by agreement with the British Government; and that the British Government shall be entitled to land additional submarine cables or establish additional wireless stations for communication with places outside Ireland.

(b) That lighthouses, buoys, beacons, and any navigational marks or navigational aids shall be maintained by the Government of the Irish Free State as at the date hereof and shall not be removed or added to except by agreement with the British Government.

(c) That war signal stations shall be closed down and left in charge of care and maintenance parties, the Government of the Irish Free State being offered the option of taking them over and working them for commercial purposes subject to Admiralty inspection, and guaranteeing the upkeep of existing telegraphic communication therewith.

3. A Convention shall be made between the same Governments for the regulation of Civil Communication by Air.

2. *The Rt. Hon. D. Lloyd George, House of Commons, December 14, 1921*

The main operation of this scheme is the raising of Ireland to the status of a Dominion of the British Empire—that of a Free State within the Empire,

with a common citizenship, and by virtue of that membership in the Empire and of that common citizenship owning allegiance to the King.

What does 'Dominion status' mean? It is difficult and dangerous to give a definition. When I made a statement at the request of the Imperial Conference to this House as to what had passed at our gathering, I pointed out the anxiety of all the Dominion delegates not to have any rigid definitions. That is not the way of the British constitution. We realize the danger of rigidity and the danger of limiting our constitution by too many finalities. Many of the Premiers delivered notable speeches in the course of that Conference emphasizing the importance of not defining too precisely what the relations of the Dominions were with ourselves, what their powers were, and what was the limit of the power of the Crown. It is something that has never been defined by an Act of Parliament, even in this country, and yet it works perfectly. All we can say is that whatever measure of freedom Dominion status gives to Canada, Australia, New Zealand, or South Africa, that will be extended to Ireland, and there will be the guarantee, contained in the mere fact that the status is the same, that wherever there is an attempt at encroaching upon the rights of Ireland, every Dominion will begin to feel that its own position is put in jeopardy. That is a guarantee which is of infinite value to Ireland. In practice it means complete control over their own internal affairs without any interference from any other part of the Empire. They are the rulers of their own hearth—finance, administration, legislation, so far as their domestic affairs are concerned—and the representatives of the Sovereign will act on the advice of the Dominion Ministers. That is in so far as internal affairs are concerned. I will come later on to the limitations which have been rendered necessary because of the peculiar position

of Ireland in reference to Great Britain, the Army and Navy more particularly.

I come now to the question of external affairs. The position of the Dominions in reference to external affairs has been completely revolutionized in the course of the last four years. I tried to call attention to that a few weeks ago when I made a statement. The Dominions since the War have been given equal rights with Great Britain in the control of the foreign policy of the Empire. That was won by the aid they gave us in the Great War. I wonder what Lord Palmerston would have said if a Dominion representative had come over here in 1856 and said, 'I am coming along to the Congress of Vienna.' I think he would have dismissed him with polite disdain and wondered where he came from. But the conditions were different. There was not a single platoon from the Dominions in the Crimean War. It would have been equally inconceivable that there should have been no representatives of the Dominion at Versailles or at Washington. Why? There had been a complete change of the conditions since 1856. What were they? A million men, young men, strong, brave, indomitable men, had gone from all the Dominions to help the Motherland in the hour of danger. Although they came to help the Empire in a policy which they had no share in passing, they felt that in future it was an unfair dilemma to impose upon them. They said: 'You are putting us in this position; either we have to support you in a policy which we might or might not approve, or we have to desert the old country in the time of trouble. That is a dilemma in which you ought never to put us. Therefore, in future, you must consult us before the event.' That was right; that was just. That was advantageous to both parties. We acceded to it gladly.

The machinery is the machinery of the British Government—the Foreign Office, the Ambassadors.

The machinery must remain here. It is impossible that it could be otherwise, unless you had a Council of Empire, with representatives elected for the purpose. Apart from that, you must<sup>1</sup> act through one instrument. The instrument of the foreign policy of the Empire is the British Foreign Office. That has been accepted by all the Dominions as inevitable. But they claim a voice in determining the lines of our future policy. At the last Imperial Conference they were there discussing our policy in Germany, our policy in Egypt, our policy in America, our policy all over the world, and we are now acting upon the mature, general decisions arrived at with the common consent of the whole Empire. The sole control of Britain over foreign policy is now vested in the Empire as a whole. That is a new fact, and I would point out what bearing it has upon the Irish controversy.

The advantage to us is that joint control means joint responsibility, and when the burden of Empire has become so vast it is well that we should have the shoulders of these young giants under the burden to help us along. It introduces a broader and a calmer view into foreign policy. It restrains rash Ministers and it will stimulate timorous ones. It widens the prospect. When we took part in discussion at the Imperial Conference what struck us was this, that from the mere fact that representatives were there from the Pacific and the Indian Ocean, and from other ends of the world, with different interests, the discussion broadened into a world-survey. That was an advantage. Our troubles were Upper Silesia, the Ruhr Valley, Angora, and Egypt, and they came there with other questions, with the problems of the Pacific, Honolulu, the Philippines, Nagasaki, and Pekin. All these problems were brought into the common stock and a wide survey was taken by all the representatives of

<sup>1</sup> This principle was surrendered in 1920; see Part V. vi, *post*.

the Empire, who would honour the policy decided upon and support that policy when it was challenged. They felt that there was not one of them who was not speaking for hundreds of thousands and millions of men who were prepared to risk their fortunes and their lives for a great Empire.

That is the position which has developed in the last four years. If any one will take the trouble, which I took a few days ago, to read Mr. Pitt's speeches on the Union, he will see how this development within the last four years has altered the argument about Union. What was Pitt's difficulty? His one great difficulty was this: He was in the middle of a great war, a Continental war, which was not going too well, and no doubt our power was being menaced, and menaced seriously. What did he find? He found two co-ordinating Parliaments, each with full, equal powers to declare peace and war, to enter into treaties and alliances, and he said: 'This is a danger.' There had been recent rebellion. He never knew what peril might develop out of that state of things. If he had had the present condition of things to deal with, does any one imagine that that is the course he would have pursued? If he had found that the question of treaties, alliances, peace, and war were left, as they are now, to a great council of free peoples, each of them self-governing, and coming together with the Motherland to discuss their affairs and decide upon their policy, what he would have done then would have been to invite Ireland to come to that Council Chamber, to merge her interests and her ideals with the common ideals of the whole of those free peoples throughout the Empire. That is the position.

Ireland will share the rights of the Empire and share the responsibilities of the Empire. She will take her part with other Free States in discussing the policy of the Empire. That, undoubtedly, commits her to responsibilities which I have no doubt

here people will honour, whatever ensues as a result of the policy agreed upon in the Council Chamber of the Empire. That is a general summary of the main proposition which is involved in these articles of agreement.

It is all very well to say 'Dominion Home Rule' or 'Dominion Self-government'; but the difficulties only begin there, difficulties formidable and peculiar to Ireland. There are multitudes of people in this country to-day who are made happy by the thought that they have settled the Irish Question, and they are happy because they said a year or two ago that the way to settle it was by Dominion Home Rule. 'That settles it.' I can assure my right hon. Friends opposite that they are not alone in this sense of self-satisfaction. But it does not settle it. You do not settle great complicated problems the moment you utter a good phrase about them. . . .

What were the difficulties? There was the preliminary difficulty that the parties were not ready to come together. There was the difficulty that arose from the geographical and strategical position of Ireland. There was no use saying, 'You must treat Ireland exactly as you treat Canada or Australia.' There was Ireland, right across the ocean. The security of this country depends on what happens on this breakwater, this advance post, this front trench of Britain. We knew that, and that was one of the greatest difficulties with which we had to deal. There was no use saying: 'Apply Dominion Home Rule fully and completely.' We had to safeguard the security of this land. I am only now enumerating the difficulties. The next difficulty was the question of the National Debt and pensions. Every Dominion has its war debt and its pensions. Unless you make some arrangement with Ireland now Irishmen in Ireland would be the only Irishmen who would escape contribution to the Great War. Irishmen in this country, Irishmen in the Dominions,

Irishmen in the United States of America, are all paying their share. Unless there were conditions in our Agreement that Irishmen in Ireland should also bear the same burden as Irishmen anywhere else they would escape.

The third was the difficulty which arose from rooted religious animosities. I am sorry to use the word 'animosities' in connexion with religion, but there they are. It is no use ignoring them. They produce fears, I think exaggerated fears, but it is a great mistake to imagine that exaggerated fears are not facts because they are exaggerated. Even the exaggeration is a fact which you have got to deal with as long as it is rooted in men's minds, perhaps extravagantly accentuated by recent events in North and South. There were the attacks on Protestants in the South. There were the difficulties about turning men out of shipyards in the North. There were these facts which accentuated old differences and added new fuel to old flames and stirred up embers. Then there was the question of protective tariffs and of the accessibility of the ports, the possibility of the exclusion of British ships from the coastal trade of Ireland, just as they are excluded in other Dominions. But the greatest difficulty of all was undoubtedly that created by the peculiar position of the north-eastern end of Ireland itself. That had wrecked every settlement up to the present. Those are roughly the peculiar difficulties, the difficulties which are Irish, which are not Dominion difficulties, and before you applied Dominion status you had to deal with each and all of these complicated troubles rooted in the past history of Ireland.

Now I will deal with them. First in regard to allegiance. If any one challenges what I am saying—and I understand it is going to be challenged—I will defer what I have got to say until an Amendment is moved on that subject, but for the moment I will confine myself to the statement that there has

been complete acceptance of allegiance to the British Crown and acceptance of membership in the Empire and acceptance of common citizenship. Now I come to the first of the great difficulties—the security of this country if full and complete Dominion Government were conferred upon Ireland. My right hon. Friend the Member for Paisley (Mr. Asquith) pointed out in his letter to *The Times* that that meant that they would have complete control over their army and the navy. They could raise any army they liked and any navy they liked. I pointed out over a year ago what that meant. I said that they could in these circumstances raise an army of half a million men. I think that that was rather ridiculed at the time. I have only got to point out two or three facts. The first is that Australia, with practically the same population, has sent that number of men overseas. The second is that during the War Great Britain raised very nearly one-sixth of its population to put under arms. That would have meant 700,000 in Ireland, and my recollection is that Scotland actually raised, with the same population, something like 700,000 men.

There are two objections, apart from the security of this country, to that being permissible. I say that even from the point of view of the security of this country there was an element of danger, but there are two objections apart from that. This country has since the War taken the leading part in the disarmament of land forces, and taken a leading part in America in the disarmament of naval forces. We were the first Power to put an end to conscription. We took a leading part in imposing the abolition of conscription upon our enemy countries in the Treaty of Peace. We could do so because we were setting the example ourselves. But these problems of the disarmament are the problems of the immediate future. How could the British Empire exercise the weight which it ought to exercise



in pressing on other countries the importance of reducing these great forces which had so much to do with provoking and precipitating the war when in partnership side by side near us we had a country with forces numbering perhaps 500,000 of men all trained for war? That is the international objection.

The second objection is of a different character. If Southern Ireland trained all its young men, and raised these big forces, one can imagine the apprehension that would fill the hearts of men in the North-East of Ireland. They would be driven, if only to give their people a sense of protection, to pursue the same course. You therefore would have all the young men of the North-East of Ulster enrolled, trained, and equipped as fighting forces of the North. What would happen? You would have two rival Powers with menacing conditions, and in those conditions an attitude of defence is apt to be distorted into a gesture of menace. Those are conditions in which conflict always begins. It was desirable in the interests of the Empire, in the interests of the world, in the interests of Ireland herself, that there should be a limitation imposed upon the raising of armaments and the training of armed men within those boundaries. . . .

The limit is not beyond what is necessary for the purpose. If you take the most sanguine view, the numbers will not exceed for the whole of Ireland, 40,000 men. That is not an extravagant figure for the maintenance of order in North and South, with all the possibilities of conflict which may arise. I know exactly what the idea of my friends in the North of Ireland is as to the numbers they require, and if they require these numbers in the North of Ireland, it is not too much to say that it would be unfair to say that the Government in the South of Ireland, responsible for law and order, should get something corresponding, on the population, to those figures.

SIR F. BANBURY: How do you propose to enforce the limit?

THE PRIME MINISTER: That is the Treaty—which is the only question now before us. My right hon. Friend inquires, if this Treaty is broken, what shall we do to enforce it? I am quite willing to face it. It is not a question of one Article. It is a question of the whole of the Articles. If Ireland breaks faith, breaks her Treaty, if such a situation has arisen, the British Empire has been quite capable of dealing with breaches of Treaties with much more formidable Powers than Ireland, but we want to feel perfectly clear that when she does so the responsibility is not ours but entirely on other shoulders.

I now come to the second force, the Navy. With regard to the Navy we felt that we could not allow the ordinary working of Dominion status to operate. Here we had the experience of the late War, which showed how vital Ireland was to the security of this country. The access to our ports is along the coasts of Ireland. For offence or defence, Ireland is a post which is a key in many respects, and though I agree that Ireland is never likely to raise a great formidable navy which will challenge us upon the seas, I would remind the House that minelayers and submarines do not cost much, and that they were our trouble mostly in the War. Then as to naval accessibility to the ports of Ireland. The use of coastal positions for the defence of our commerce and the British Islands in time of war is vital. We could not leave that merely to good will or the general interpretation of vague conditions of the Treaty. Goodwill has been planted, but it must have time to grow, and it must not be exposed too much to the winds of temptation. Therefore we felt that where the security of these islands was concerned we must leave nothing to chance. . . .

What we have done there is this: We felt that the defence of these islands by sea ought to be left to

the British Navy. It is better for Ireland and better for England. There is the inherited skill, there is the power, there is the tradition of the Navy, so that the first thing we provided for was that in the case of war we should have free access to all the Irish harbours and creeks. If there is war we cannot wait for discussions between Governments as to whether you can send your ships here or land men there. The decision must be left to the discretion of the men who conduct the operations.

That is safeguarded by these Articles of Agreement. That does not mean that we do not contemplate that Ireland should take her share in the defence of these islands, the defence of her own coast, and by defending her own coasts helping us to defend ours. In five years we propose to review the conditions, and we trust it will then be possible to allocate a certain proportion of defence to Ireland herself. But that is a matter for discussion and agreement. We shall welcome her co-operation just as we welcome the co-operation of the great Dominions in naval defence and in all the other defence that is necessary for the Empire. If there are any questions to be put upon it, I shall be very glad to answer them.

I now come to the question of tariffs. Here I confess that I was very reluctant to assent to any proposition which would involve Ireland having the right to impose tariffs upon British goods, although undoubtedly it was a Dominion right. Ultimately and only very reluctantly we assented to this for the reason that Ireland is more dependent upon Britain in the matter of trade than is Britain upon Ireland. For Irish produce, especially agricultural products, England is substantially the only purchaser. That is certainly not the case in the opposite way. Therefore the danger of any menace to our trade and commerce from this quarter is one which is entirely in our own hands; but I did think it was very important that there should be a protection

against any legislation which would exclude British ships from the coastal trade with Ireland, and that was inserted in the Agreement.<sup>1</sup>

I come now to the more vexed question of Ulster. Here we had all given a definitely clear pledge that under no conditions would we agree to any proposals that would involve the coercion of Ulster. That was a pledge given by my right hon. Friend the Member for Paisley when I served under him as my chief. I fully assented to it. I have always been strongly of the view that you could not do it without provoking a conflict which would simply mean transferring the agony from the South to the North and thus unduly prolonging the Irish controversy instead of settling it. Therefore on policy I have always been in favour of the pledge that there should be no coercion of Ulster. There were some of my hon. Friends who thought fit to doubt whether we meant to stand by that pledge. We have never for a moment forgotten the pledge, not for an instant. That did not preclude us from endeavouring to persuade Ulster to come into an All-Ireland Parliament. Surely Ulster is not above being argued with. You cannot hold that arguing a question and saying that a person ought to take a certain course is coercing him. If you threaten, if you say you will use the forces of the Crown, that is coercion; but if you say that in your judgement it is in his interests, in the interests of the whole of Ireland and in the interests of the British Empire, in the interests of the minority in the South, that Ulster should come in, surely that is an argument which we are entitled to use and entitled to press?

MR. R. MCNEILL: If you use it fairly.

THE PRIME MINISTER: I claim that we have used it fairly—quite fairly. We have used every argument in favour of it. I have heard from the benches

<sup>1</sup> Article 9. It is not clear if the interpretation of that provision is correct.

where the hon. Member for Canterbury (Mr. R. McNeill) sits my right hon. Friend Lord Carson set forward as the ultimate ideal—the unity of Ireland. I have never heard an Ulster leader challenge the proposition that that was the ultimate ideal. I meant to have the quotation before me, but I did not think that would be doubted. If that be the ultimate ideal, was it unfair to Ulster to recommend that they should consider the question? That is all we have done. The refusal of Ulster even to enter into discussion, as long as an all-Ireland Parliament was a subject of discussion, raised artificial barriers in the way of an interchange of views. We could not have agreed to withdraw the discussion of an all-Ireland Parliament from the Conference without breaking it up, and we should not have been justified in breaking it up upon a refusal even to enter into a discussion of the desirability of the proposal. The responsibility was too great, and we could not accept it.

#### ALL-IRELAND PARLIAMENT

What is the decision we have come to in this Treaty? Ulster has her option either to join an All-Ireland Parliament or to remain exactly as she is. No change from her present position will be involved if she decides by an Address to the Crown to remain where she is. It is an option which she may or may not exercise, and I am not going to express an opinion upon the subject. If she exercises her option with her full rights under the Act of 1920, she will remain without a single change except in respect of boundaries. We were of opinion—and we are not alone in that opinion, because there are friends of Ulster who take the same view—that it is desirable, if Ulster is to remain a separate unit, that there should be a readjustment of boundaries.<sup>1</sup>

<sup>1</sup> Mr. Lloyd George discussed this issue at length, and then stressed the fact that a psychological moment had been chosen for concluding the Treaty.

On the British side we have allegiance to the Crown, partnership in the Empire, security of our shores, non-coercion of Ulster. These are the provisions we have over and over again laid down, and they are here, signed in this document. On the Irish side there is one supreme condition, that the Irish people as a nation should be free in their own land to work out their own national destinies in their own way. These two nations, I believe, will be reconciled. Ireland, within her own boundaries, will be free to marshal her own resources, direct her own forces, material, moral, and spiritual, and guide her own destinies. She has accepted allegiance to the Crown, partnership in the same Empire, and subordinated her external relations to the judgement of the same general Council of the Empire as we have. She has agreed to freedom of choice for Ulster. The freedom of Ireland increases the strength of the Empire by ending the conflict which has been carried on for centuries with varying success, but with unvarying discredit, for centuries. Incidents of that struggle have done more to impair the honour of this country than any aspect of its world dominion throughout the ages. It was not possible to interchange views with the truest friends of Britain without feeling that there was something in reference to Ireland to pass over. This brings new credit to the Empire, and it brings new strength. It brings to our side a valiant comrade.

During the trying years of the War we set up for the first time in the history of this Empire a great Imperial War Cabinet. There were present representatives of Canada, Australia, South Africa, New Zealand, and India, but there was one vacant chair, and we all were conscious of it. It was the chair that ought to have been filled by Ireland. In so far as it was occupied, it was occupied by the shadow of a fretful, resentful, angry people—angry not merely for ancient wrongs, but angry because, while every

nation in the Empire had its nationhood honoured, the people who were a nation when the oldest Dominion had not even been discovered had its nationhood ignored. The youngest Dominion marched into the War under its own flag. As for the flag of Ireland, it was torn from the hands of men who had volunteered to die for the cause which the British Empire was championing. The result was a rebellion, and at the worst moment of the War, we had to divert our mind to methods of dealing with the crisis in Ireland. Henceforth that chair will be filled by a willing Ireland, radiant because her long quarrel with Great Britain will have been settled by the concession of liberty to her own people, and she can now take part in the partnership of Empire, not merely without loss of self-respect, but with an accession of honour to herself and of glory to her own nationhood. By this agreement we win to our side a nation of deep abiding and even passionate loyalties. What nation ever showed such loyalty to its faith under such conditions? Generations of persecution, proscription, beggary, and disdain—she faced them all. She showed loyalty to Kings whom Britain had thrown over. Ireland stood by them, and shed her blood to maintain their inheritance—that precious loyalty which she now avows to the Throne, and to the partnership and common citizenship of Empire. It would be taking too hopeful a view of the future to imagine that the last peril of the British Empire has passed. There are still dangers lurking in the mists. Whence will they come? From what quarter? Who knows? But when they do come, I feel glad to know that Ireland will be there by our side, and the old motto that 'England's danger is Ireland's opportunity' will have a new meaning. As in the case of the Dominions in 1914, our peril will be her danger, our fears will be her anxieties, our victories will be her joy.

3. *Mr. A. Griffith, Dáil Éireann, December 19, 1921*

MR. GRIFFITH (Minister for Foreign Affairs):  
I move the motion standing in my name—

‘That Dáil Éireann approves of the Treaty between Great Britain and Ireland, signed in London on December 6th, 1921.’

Nearly three months ago Dáil Éireann appointed plenipotentiaries to go to London to treat with the British Government and to make a bargain with them. We have made a bargain. We have brought it back. We were to go there to reconcile our aspirations with the association of the community of nations known as the British Empire. That task which was given to us was as hard as was ever placed on the shoulders of men. We faced that task; we knew that whatever happened we would have our critics, and we made up our minds to do whatever was right and disregard whatever criticism might occur. We could have shirked the responsibility. We did not seek to act as the plenipotentiaries; other men were asked and other men refused. We went. The responsibility is on our shoulders; we took the responsibility in London and we take the responsibility in Dublin. I signed that Treaty not as the ideal thing, but fully believing, as I believe now, it is a Treaty honourable to Ireland, and safeguards the vital interests of Ireland.

And now by that Treaty I am going to stand, and every man with a scrap of honour who signed it is going to stand. It is for the Irish people—who are our masters (*hear, hear*), not our servants, as some think—it is for the Irish people to say whether it is good enough. I hold that it is, and I hold that the Irish people—that 95 per cent. of them believe it to be good enough. We are here, not as the dictators of the Irish people, but as the representatives of the Irish people, and if we misrepresent the Irish people, then the moral authority of Dáil Éireann, the



strength behind it, and the fact that Dáil Eireann spoke the voice of the Irish people, is gone, and gone for ever. Now, the President—and I am in a difficult position—does not wish a certain document referred to read. But I must refer to the substance of it. An effort has been made outside to represent that a certain number of men stood uncompromisingly on the rock of the Republic—the Republic, and nothing but the Republic.

It has been stated also here that the man who made this position, the man who won the war—Michael Collins—compromised Ireland's rights. In the letters that preceded the negotiations not once was a demand made for recognition of the Irish Republic. If it had been made we knew it would have been refused. We went there to see how to reconcile the two positions, and I hold we have done it. The President does not wish this document to be read. What am I to do? What am I to say? Am I to keep my mouth shut and let the Irish people think about this uncompromising rock?

PRESIDENT DE VALERA: I will make my position in my speech quite clear.

MR. GRIFFITH (Minister for Foreign Affairs): What we have to say is this, that the difference in this Cabinet and in this House is between half-recognizing the British King and the British Empire, and between marching in, as one of the speakers said, with our heads up. The gentlemen on the other side are prepared to recognize the King of England as head of the British Commonwealth. They are prepared to go half in the Empire and half out. They are prepared to go into the Empire for war and peace and treaties, and to keep out for other matters, and that is what the Irish people have got to know is the difference. Does all this quibble of words—because it is merely a quibble of words—mean that Ireland is asked to throw away this Treaty and go back to war? So far as my power or voice extends,

not one young Irishman's life shall be lost on that quibble. We owe responsibility to the Irish people. I feel my responsibility to the Irish people, and the Irish people must know, and know in every detail, the difference that exists between us, and the Irish people must be our judges. When the plenipotentiaries came back they were sought to be put in the dock. Well, if I am going to be tried, I am going to be tried by the people of Ireland (*hear, hear*). Now this Treaty has been attacked. It has been examined with a microscope to find its defects, and this little thing and that little thing has been pointed out, and the people are told—one of the gentlemen said it here—that it was less even than the proposals of July. It is the first Treaty between the representatives of the Irish Government and the representatives of the English Government since 1172 signed on equal footing. It is the first Treaty that admits the equality of Ireland. It is a Treaty of equality, and because of that I am standing by it. We have come back from London with that Treaty—Saorstát na hEireann recognized—the Free State of Ireland. We have brought back the flag; we have brought back the evacuation of Ireland after 700 years by British troops and the formation of an Irish army (*applause*). We have brought back to Ireland her full rights and powers of fiscal control. We have brought back to Ireland equality with England, equality with all nations which form that Commonwealth, and an equal voice in the direction of foreign affairs in peace and war. Well, we are told that that Treaty is a derogation from our status; that it is a Treaty not to be accepted, that it is a poor thing, and that the Irish people ought to go back and fight for something more, and that something more is what I describe as a quibble of words. Now, I shall have an opportunity later on of replying to the very formidably arranged criticism that is going to be levelled at the Treaty to

show its defects. At all events, the Irish people are a people of great common sense. They know that a Treaty that gives them their flag and their Free State and their Army (*cheers*) is not a sham Treaty, and the sophists and the men of words will not mislead them, I tell you. In connexion with the Treaty men said this and said that, and I was requested to get from Mr. Lloyd George a definite statement covering points in the Treaty which some gentlemen misunderstood. This is Mr. Lloyd George's letter:

10, DOWNING STREET, S.W. 1.

13th December, 1921.

SIR,—As doubts may be expressed regarding certain points not specifically mentioned in the Treaty terms, I think it is important that their meaning should be clearly understood.

The first question relates to the method of appointment of the Representatives of the Crown in Ireland. Article III of the Agreement lays down that he is to be appointed 'in like manner as the Governor-General of Canada and in accordance with the practice observed in the making of such appointment'. This means that the Government of the Irish Free State will be consulted so as to ensure a selection acceptable to the Irish Government before any recommendation is made to his Majesty.

The second question is as to the scope of the Arbitration contemplated in Article V regarding Ireland's liability for a share of War Pensions and the Public Debt. The procedure contemplated by the Conference was that the British Government should submit its claim, and that the Government of the Irish Free State should submit any counter-claim to which it thought Ireland entitled.

Upon the case so submitted the Arbitrators would decide after making such further inquiries as they might think necessary; their decision would then be final and binding on both parties. It is, of course, understood that the arbitrator or arbitrators to whom the case is referred shall be men as to whose impartiality both the British Government and the Government of the Irish Free State are satisfied.

The third question relates to the status of the Irish Free State. The special arrangements agreed between us in Articles VI, VII, VIII, and IX, which are not in the Canadian constitution, in no way affect status. They are necessitated by the proximity and interdependence of the two islands—by conditions, that is, which do not exist in the case of Canada.

They in no way affect the position of the Irish Free State in the Commonwealth or its title to representation, like Canada, in the Assembly of the League of Nations. They were agreed between us for our mutual benefit, and have no bearing of any kind upon the question of status. It is our desire that Ireland shall rank as co-equal with the other nations of the Commonwealth, and we are ready to support her claim to a similar place in the League of Nations as soon as her new Constitution comes into effect.

The framing of that Constitution will be in the hands of the Irish Government, subject, of course, to the terms of Agreement, and to the pledges given in respect of the minority by the head of the Irish Delegation. The establishment and composition of the Second Chamber is, therefore, in the discretion of the Irish people. There is nothing in the Articles of Agreement to suggest that Ireland is in this respect bound to the Canadian model.

I may add that we propose to begin withdrawing the Military and Auxiliary Forces of the Crown in Southern Ireland when the Articles of Agreement are ratified.

I am, Sir,

Your obedient Servant,

D. LLOYD GEORGE.

Various different methods of attack on this Treaty have been made. One of them was they did not mean to keep it. Well, they have ratified it, and it can come into operation inside a fortnight. We think they do mean to keep it if we keep it. They are pledged now before the world, pledged by their signature, and if they depart from it they will be disgraced and we will be stronger in the world's eyes than we are to-day. During the last few years a war was waged on the Irish people, and the Irish people

defended themselves, and for a portion of that time, when President de Valera was in America, I had at least the responsibility on my shoulders of standing for all that was done in that defence, and I stood for it (*applause*). I would stand for it again under similar conditions. Ireland was fighting then against an enemy that was striking at her life, and was denying her liberty, but in any contest that would follow the rejection of this offer Ireland would be fighting with the sympathy of the world against her, and with all the Dominions—all the nations that comprise the British Commonwealth—against her.

The position would be such that I believe no conscientious Irishman could take the responsibility for a single Irishman's life in that futile war. Now, many criticisms, I know, will be levelled against this Treaty; one in particular, one that is in many instances quite honest, it is the question of the oath. I ask the members to see what the oath is, to read it, not to misunderstand or misrepresent it. It is an oath of allegiance to the Constitution of the Free State of Ireland and of faithfulness to King George V in his capacity as head and in virtue of the common citizenship of Ireland with Great Britain and the other nations comprising the British Commonwealth. That is an oath, I say, that any Irishman could take with honour. He pledges his allegiance to his country and to be faithful to this Treaty, and faithfulness after to the head of the British Commonwealth of Nations. If his country were unjustly used by any of the nations of that Commonwealth, or its head, then his allegiance is to his own country and his allegiance bids him to resist (*hear, hear*).

We took an oath to the Irish Republic, but, as President de Valera himself said, he understood that oath to bind him to do the best he could for Ireland. So do we. We have done the best we could for Ireland. If the Irish people say 'We have got

everything else but the name Republic, and we will fight for it,' I would say to them that they are fools, but I will follow in the ranks. I will take no responsibility. But the Irish people will not do that. Now it has become rather a custom for men to speak of what they did, and did not do, in the past. I am not going to speak of that aspect, except one thing. It is this. The prophet I followed throughout my life, the man whose words and teachings I tried to translate into practice in politics, the man whom I revered above all Irish patriots was Thomas Davis. In the hard way of fitting practical affairs into idealism I have made Thomas Davis my guide. I have never departed in my life one inch from the principles of Thomas Davis, and in signing this Treaty and bringing it here and asking Ireland to ratify it I am following Thomas Davis still.

Later on, when coming to reply to criticism, I will deal with the other matters. Thomas Davis said:

Peace with England, alliance with England to some extent, and, under certain circumstances, confederation with England; but an Irish ambition, Irish hopes, strength, virtue, and rewards for the Irish.

That is what we have brought back, peace with England, alliance with England, confederation with England, an Ireland developing her own life, carving out her own way of existence, and rebuilding the Gaelic civilization broken down at the battle of Kinsale. I say we have brought you that. I say we have translated Thomas Davis into the practical politics of the day. I ask then this Dáil to pass this resolution, and I ask the people of Ireland, and the Irish people everywhere, to ratify this Treaty, to end this bitter conflict of centuries, to end it for ever, to take away that poison that has been rankling in the two countries and ruining the relationship of good neighbours. Let us stand as free partners, equal with England, and make after 700 years the

greatest revolution that has ever been made in the history of the world—a revolution of seeing the two countries standing not apart as enemies, but standing together as equals and as friends. I ask you, therefore, to pass this resolution (*applause*).

4. *Act of the Imperial Parliament to provide for the Constitution of the Irish Free State, December 5, 1922 (13 Geo. 5, c. 1, Session 2)*

Whereas the House of the Parliament constituted pursuant to the Irish Free State (Agreement) Act, 1922, sitting as a Constituent Assembly for the settlement of the Constitution of the Irish Free State, has passed the Measure (hereinafter referred to as 'the Constituent Act') set forth in the Schedule to this Act, whereby the Constitution appearing as the First Schedule to the Constituent Act is declared to be the Constitution of the Irish Free State:

And whereas by the Constituent Act the said Constitution is made subject to the following provisions, namely:

'The said Constitution shall be construed with reference to the Articles of Agreement for a Treaty between Great Britain and Ireland set forth in the Second Schedule hereto annexed (hereinafter referred to as the Scheduled Treaty) which are hereby given the force of law, and if any provision of the said Constitution or of any amendment thereof or of any law made thereunder is in any respect repugnant to any of the provisions of the Scheduled Treaty, it shall, to the extent only of such repugnancy, be absolutely void and inoperative and the Parliament and the Executive Council of the Irish Free State shall respectively pass such further legislation and do all such other things as may be necessary to implement the Scheduled Treaty.'

And whereas by Article seventy-four of the said Constitution provision is made for the continuance

within the Irish Free State of existing taxation in respect of the current present financial year and any preceding financial year, and in respect of any period ending or occasion happening within those years, and it is expedient to make a corresponding provision with respect to taxation within the rest of the United Kingdom:

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual, and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

1. The Constitution set forth in the First Schedule to the Constituent Act shall, subject to the provisions to which the same is by the Constituent Act so made subject as aforesaid, be the Constitution of the Irish Free State, and shall come into operation on the same being proclaimed by His Majesty in accordance with Article eighty-three of the said Constitution, but His Majesty may at any time after the proclamation appoint a Governor-General for the Irish Free State.

2. [Temporary continuation of present system of taxation.]

3. If the Parliament of the Irish Free State make provision to that effect, any Act passed before the passing of this Act which applies to or may be applied to self-governing Dominions, whether alone or to such Dominions and other parts of His Majesty's Dominions, shall apply or may be applied to the Irish Free State in like manner as it applies or may be applied to self-governing Dominions.

4. Nothing in the said Constitution shall be construed as prejudicing the power of Parliament to make laws affecting the Irish Free State in any case where, in accordance with constitutional practice, Parliament would make laws affecting other self-governing Dominions.



5. This Act may be cited as the Irish Free State Constitution Act, 1922 (Session 2), and shall be deemed to be the Act of Parliament for the ratification of the said Articles of Agreement<sup>1</sup> as from the passing whereof the month mentioned in Article eleven of the said Articles is to run.

*5. Act of Dáil Eireann, sitting as a Constituent Assembly, enacting a Constitution for The Irish Free State (No. 1 of 1922), October 25, 1922*

# CONSTITUENT ACT

Dáil Eireann sitting as a Constituent Assembly in this Provisional Parliament, acknowledging that all lawful authority comes from God to the people and in the confidence that the National life and unity of Ireland shall thus be restored, hereby proclaims the establishment of The Irish Free State (otherwise called Saorstát Eireann) and in the exercise of undoubted right, decrees and enacts as follows:

1. The Constitution set forth in the First Schedule hereto annexed shall be the Constitution of The Irish Free State (Saorstát Eireann).

2. (Cited p. 105, *ante*.)

3. This Act may be cited for all purposes as the Constitution of The Irish Free State (Saorstát Eireann) Act, 1922.

## FIRST SCHEDULE ABOVE REFERRED TO

*Constitution of the Irish Free State (Saorstát Eireann)*

### Article 1,

The Irish Free State (otherwise hereinafter called or sometimes called Saorstát Eireann) is a co-equal member of the Community of Nations forming the British Commonwealth of Nations.

### Article 2.

All powers of government and all authority legislative, executive, and judicial in Ireland, are derived

<sup>1</sup> See No. 1, above, p. 79.

from the people of Ireland and the same shall be exercised in the Irish Free State (Saorstát Eireann) through the organizations established by or under, and in accord with, this Constitution.

#### Article 3.

Every person, without distinction of sex, domiciled in the area of the jurisdiction of the Irish Free State (Saorstát Eireann) at the time of the coming into operation of this Constitution who was born in Ireland or either of whose parents was born in Ireland or who has been ordinarily resident in the area of the jurisdiction of the Irish Free State (Saorstát Eireann) for not less than seven years, is a citizen of the Irish Free State (Saorstát Eireann) and shall within the limits of the jurisdiction of the Irish Free State (Saorstát Eireann) enjoy the privileges and be subject to the obligations of such citizenship: Provided that any such person being a citizen of another State may elect not to accept the citizenship hereby conferred; and the conditions governing the future acquisition and termination of citizenship in the Irish Free State (Saorstát Eireann) shall be determined by law.<sup>1</sup>

#### Article 4.

The National language of the Irish Free State (Saorstát Eireann) is the Irish language, but the English language shall be equally recognized as an official language. Nothing in this Article shall prevent special provisions being made by the Parliament of the Irish Free State (otherwise called and herein generally referred to as the 'Oireachtas') for districts or areas in which only one language is in general use.

#### Article 5.

No title of honour in respect of any services rendered in or in relation to the Irish Free State

<sup>1</sup> No such law was passed up to 1931.

(Saorstát Éireann) may be conferred on any citizen of the Irish Free State (Saorstát Éireann) except with the approval or upon the advice of the Executive Council of the State.

Article 6.

The liberty of the person is inviolable,<sup>1</sup> and no person shall be deprived of his liberty except in accordance with law. Upon complaint made by or on behalf of any person that he is being unlawfully detained, the High Court and any and every judge thereof shall forthwith inquire into the same and may make an order requiring the person in whose custody such person shall be detained to produce the body of the person so detained before such Court or judge without delay and to certify in writing as to the cause of the detention and such Court or judge shall thereupon order the release of such person unless satisfied that he is being detained in accordance with the law:

Provided, however, that nothing in this Article contained shall be invoked to prohibit control or interfere with any act of the military forces of the Irish Free State (Saorstát Éireann) during the existence of a state of war or armed rebellion.

Article 7.

The dwelling of each citizen is inviolable and shall not be forcibly entered except in accordance with law.

Article 8.

Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen, and no law may be made either directly or indirectly to endow any religion, or prohibit or restrict the free

<sup>1</sup> See, however, the Constitution (Amendment No. 17) Act, 1931 (No. 37), making permanent the principles of the Public Safety Act, 1927 (No. 31), which was repealed in 1928 (No. 38).

exercise thereof or give any preference, or impose any disability on account of religious belief or religious status, or affect prejudicially the right of any child to attend a school receiving public money without attending the religious instruction at the school, or make any discrimination as respects State aid between schools under the management of different religious denominations, or divert from any religious denomination or any educational institution any of its property except for the purpose of roads, railways, lighting, water or drainage works, or other works of public utility, and on payment of compensation.

Article 9.

The right of free expression of opinion as well as the right to assemble peaceably and without arms, and to form associations or unions is guaranteed for purposes not opposed to public morality. Laws regulating the manner in which the right of forming associations and the right of free assembly may be exercised shall contain no political, religious, or class distinction.

Article 10.

All citizens of the Irish Free State (Saorstát Éireann) have the right to free elementary education.

Article 12.

A Legislature is hereby created to be known as the Oireachtas. It shall consist of the King and two Houses, the Chamber of Deputies (otherwise called and herein generally referred to as 'Dáil Éireann') and the Senate (otherwise called and herein generally referred to as 'Seanad Éireann'). The sole and exclusive power of making laws for the peace, order, and good government of the Irish Free State (Saorstát Éireann) is vested in the Oireachtas.

Article 13.

The Oireachtas shall sit in or near the city of Dublin or in such other place as from time to time it may determine.

Article 14.

All citizens of the Irish Free State (Saorstát Eireann) without distinction of sex, who have reached the age of twenty-one years and who comply with the provisions of the prevailing electoral laws, shall have the right to vote for members of Dáil Eireann, and to take part in the Referendum and Initiative.<sup>1</sup> All citizens of the Irish Free State (Saorstát Eireann) without distinction of sex who have reached the age of thirty years and who comply with the provisions of the prevailing electoral laws, shall have the right to vote for members of Seanad Eireann.<sup>2</sup> No voter may exercise more than one vote at an election to either House and the voting shall be by secret ballot. The mode and place of exercising this right shall be determined by law.

Article 17.

The oath to be taken by members of the Oireachtas shall be in the following form:

I.....do solemnly swear true faith and allegiance to the Constitution of the Irish Free State as by law established, and that I will be faithful to H.M. King George V, his heirs and successors by law in virtue of the common citizenship of Ireland with Great Britain and her adherence to and membership of the group of nations forming the British Commonwealth of Nations.

Such oath shall be taken and subscribed by every member of the Oireachtas before taking his seat

<sup>1</sup> Provision for the Referendum and Initiative was made by Articles 47 and 48, but was repealed by Act No. 8 of 1928.

<sup>2</sup> Under Act No. 13 of 1928 the Senate is elected by the members of the two Houses voting together by proportional representation.

therein before the Representative of the Crown or some person authorized by him.

Article 24.

The Oireachtas shall hold at least one session each year. The Oireachtas shall be summoned and dissolved by the Representative of the Crown in the name of the King and subject as aforesaid Dáil Eireann shall fix the date of re-assembly of the Oireachtas and the date of the conclusion of the session of each House: Provided that the sessions of Seanad Eireann shall not be concluded without its own consent.

Article 26.

Dáil Eireann shall be composed of members who represent constituencies determined by law. The number of members shall be fixed from time to time by the Oireachtas, but the total number of members of Dáil Eireann (exclusive of members for the Universities) shall not be fixed at less than one member for each thirty thousand of the population, or at more than one member for each twenty thousand of the population: Provided that the proportion between the number of members to be elected at any time for each constituency and the population of each constituency, as ascertained at the last preceding census, shall, so far as possible, be identical throughout the country. The members shall be elected upon principles of Proportional Representation. The Oireachtas shall revise the constituencies at least once in every ten years, with due regard to changes in distribution of the population, but any alterations in the constituencies shall not take effect during the life of Dáil Eireann sitting when such revision is made.

Article 27.

Each University in the Irish Free State (Saorstát Eireann) which was in existence at the date of the

coming into operation of this Constitution, shall be entitled to elect three representatives to Dáil Éireann upon a franchise and in a manner to be prescribed by law.

#### Article 30.

Seanad Éireann shall be composed of citizens who shall be proposed on the grounds that they have done honour to the Nation by reason of useful public service or that, because of special qualifications or attainments, they represent important aspects of the Nation's life.<sup>1</sup>

#### Article 41.

So soon as any Bill shall have been passed or deemed to have been passed by both Houses, the Executive Council shall present the same to the Representative of the Crown for the signification by him, in the King's name, of the King's assent, and such Representative may withhold the King's assent or reserve the Bill for the signification of the King's pleasure: Provided that the Representative of the Crown shall in the withholding of such assent to or the reservation of any Bill, act in accordance with the law, practice, and constitutional usage governing the like withholding of assent or reservation in the Dominion of Canada.

A Bill reserved for the signification of the King's Pleasure shall not have any force unless and until within one year from the day on which it was presented to the Representative of the Crown for the King's Assent, the Representative of the Crown signifies by speech or message to each of the Houses of the Oireachtas, or by proclamation, that it has received the Assent of the King in Council.

An entry of every such speech, message, or procla-

<sup>1</sup> Senators must be 30 years of age and now hold office for nine years in rotation. The powers of the Senate are nominal as regards money-bills, and only extend to delaying the progress of other measures in case of disagreement. It serves, however, as a useful means of revision. See Act No. 13 of 1923.

mation shall be made in the Journal of each House and a duplicate thereof duly attested shall be delivered to the proper officer to be kept among the Records of the Irish Free State (Saorstát Eireann).

Article 43.

The Oireachtas shall have no power to declare acts to be infringements of the law which were not so at the date of their commission.<sup>1</sup>

Article 46.

The Oireachtas has the exclusive right to regulate the raising and maintaining of such armed forces as are mentioned in the Scheduled Treaty in the territory of the Irish Free State (Saorstát Eireann) and every such force shall be subject to the control of the Oireachtas.

Article 49.

Save in the case of actual invasion, the Irish Free State (Saorstát Eireann) shall not be committed to active participation in any war without the assent of the Oireachtas.

Article 50.

Amendments of this Constitution within the terms of the Scheduled Treaty may be made by the Oireachtas, but no such amendment, passed by both Houses of the Oireachtas, after the expiration of a period of eight<sup>2</sup> years from the date of the coming into operation of this Constitution, shall become law, unless the same shall, after it has been passed or deemed to have been passed by the said two Houses of the Oireachtas, have been submitted to a Referendum of the people, and unless a majority of the voters on the register shall have recorded their votes on such Referendum, and either the votes of a majority of the voters on the register, or two-thirds of the votes recorded, shall have been

<sup>1</sup> This presumably refers only to criminal law.

<sup>2</sup> Altered to sixteen by Act No. 10 of 1929.



cast in favour of such amendment. Any such amendment may be made within the said period of eight<sup>1</sup> years by way of ordinary legislation and<sup>2</sup> as such shall be subject to the provisions of Article 47 hereof.

#### Article 51.

The Executive Authority of the Irish Free State (Saorstát Eireann) is hereby declared to be vested in the King, and shall be exercisable, in accordance with the law, practice, and constitutional usage governing the exercise of the Executive Authority in the case of the Dominion of Canada, by the Representative of the Crown. There shall be a Council to aid and advise in the government of the Irish Free State (Saorstát Eireann) to be styled the Executive Council. The Executive Council shall be responsible to the Dáil Eireann, and shall consist of not more than seven<sup>3</sup> nor less than five Ministers appointed by the Representative of the Crown on the nomination of the President of the Executive Council.

#### Article 52.

Those Ministers who form the Executive Council shall all be members of Dáil Eireann and shall include the President of the Council, the Vice-President of the Council, and the Minister in charge of the Department of Finance.<sup>4</sup>

#### Article 53.

The President of the Council shall be appointed on the nomination of Dáil Eireann. He shall nominate a Vice-President of the Council, who shall act

<sup>1</sup> Altered to sixteen by Act No. 10 of 1929.

<sup>2</sup> Omitted under Act No. 8 of 1928.

<sup>3</sup> Increased to twelve by No. 13 of 1927, thus terminating in practice the operation of Articles 55 and 56 under which ministers not in the Council nor collectively responsible were elected by the Dáil.

<sup>4</sup> These three ministers must be members of the Dáil, but under Act No. 9 of 1929 one other Minister may be a Senator. During a dissolution Ministers strictly speaking seem under this article to have no status, but *ex necessitate* remain in office.

for all purposes in the place of the President, if the President shall die, resign, or be permanently incapacitated, until a new President of the Council shall have been elected. The Vice-President shall also act in the place of the President during his temporary absence. The other Ministers who are to hold office as members of the Executive Council shall be appointed on the nomination of the President, with the assent of Dáil Eireann, and he and the Ministers nominated by him shall retire from office should he cease to retain the support of a majority in Dáil Eireann, but the President and such Ministers shall continue to carry on their duties until their successors shall have been appointed: Provided, however, that the Oireachtas shall not be dissolved on the advice of an Executive Council which has ceased to retain the support of a majority in Dáil Eireann.

Article 54.

The Executive Council shall be collectively responsible for all matters concerning the Departments of State administered by Members of the Executive Council. The Executive Council shall prepare Estimates of the receipts and expenditure of the Irish Free State (Saorstát Eireann) for each financial year, and shall present them to Dáil Eireann before the close of the previous financial year. The Executive Council shall meet and act as a collective authority.

Article 57.

Every Minister shall have the right to attend and be heard in Seanad Eireann.

Article 58.

The appointment of a member of Dáil Eireann to be a Minister shall not entail upon him any obligation to resign his seat or to submit himself for re-election.

Article 59.

Ministers shall receive such remuneration as may from time to time be prescribed by law, but the remuneration of any Minister shall not be diminished during his term of office.

Article 60.

The Representative of the Crown, who shall be styled the Governor-General of the Irish Free State (Saorstát Eireann) shall be appointed in like manner as the Governor-General of Canada and in accordance with the practice observed in the making of such appointments. His salary shall be of the like amount as that now payable to the Governor-General of the Commonwealth of Australia and shall be charged on the public funds of the Irish Free State (Saorstát Eireann) and suitable provision shall be made out of those funds for the maintenance of his official residence and establishment.

Article 64.

The judicial power of the Irish Free State (Saorstát Eireann) shall be exercised and justice administered in the public Courts established by the Oireachtas by judges appointed in manner hereinafter provided. These Courts shall comprise Courts of First Instance and a Court of Final Appeal to be called the Supreme Court. The Courts of First Instance shall include a High Court, invested with full original jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal, and also Courts of local and limited jurisdiction with a right of appeal as determined by law.

Article 65.

The judicial power of the High Court shall extend to the question of the validity of any law having regard to the provisions of the Constitution. In all

cases in which such matters shall come into question, the High Court alone shall exercise original jurisdiction.

Article 66.

The Supreme Court of the Irish Free State (Saorstát Eireann) shall, with such exceptions (not including cases which involve questions as to the validity of any law) and subject to such regulations as may be prescribed by law, have appellate jurisdiction from all decisions of the High Court. The decision of the Supreme Court shall in all cases be final and conclusive, and shall not be reviewed or capable of being reviewed by any other Court, Tribunal, or Authority whatsoever:

Provided that nothing in this Constitution shall impair the right of any person to petition His Majesty for special leave to appeal from the Supreme Court to His Majesty in Council or the right of His Majesty to grant such leave.

Article 68.

The judges of the Supreme Court and of the High Court and of all other Courts established in pursuance of this Constitution shall be appointed by the Representative of the Crown on the advice of the Executive Council. The judges of the Supreme Court and of the High Court shall not be removed except for stated misbehaviour or incapacity, and then only by resolutions passed by both Dáil Eireann and Seanad Eireann. The age of retirement, and the remuneration and the pension of such judges on retirement and the declarations to be taken by them on appointment shall be prescribed by law. Such remuneration may not be diminished during their continuance in office. The terms of appointment of the judges of such other courts as may be created shall be prescribed by law.

Article 69.

All judges shall be independent in the exercise of their functions, and subject only to the Constitution and the law. A judge shall not be eligible to sit in the Oireachtas, and shall not hold any other office or position of emolument.

Article 70.

No one shall be tried save in due course of law and extraordinary courts shall not be established,<sup>1</sup> save only such Military Tribunals as may be authorized by law for dealing with military offenders against military law. The jurisdiction of Military Tribunals shall not be extended to or exercised over the civil population save in time of war, or armed rebellion, and for acts committed in time of war or armed rebellion, and in accordance with the regulations to be prescribed by law. Such jurisdiction shall not be exercised in any area in which all civil courts are open or capable of being held, and no person shall be removed from one area to another for the purpose of creating such jurisdiction.

Article 72.

No person shall be tried on any criminal charge without a jury save in the case of charges in respect of minor offences triable by law before a Court of Summary Jurisdiction and in the case of charges for offences against military law triable by Court Martial or other Military Tribunal.

6. *The Rt. Hon. Sir John Simon, House of Commons,*  
*November 27, 1922*

I rise to express, on behalf of myself and my friends with whom I am associated, our complete

<sup>1</sup> This was changed by Act No. 27 of 1931, providing for the creation in conditions of emergency of Military Tribunals, sitting without juries, to try any offence against the Government, with power to increase penalties. But the Act is to be repealed.

concurrence with what the Prime Minister said at the opening of the Debate. He pointed out, and I think it is one of the encouraging features of the situation, that this Constitution is a Constitution which has been drafted in Ireland by Irishmen for Ireland. In that respect it differs from the great Gladstonian scheme, from the Act of 1914, and from the Act of 1920. The procedure that has been followed is, however, by no means a novel or a revolutionary procedure. As the Prime Minister pointed out, the Constitutions under which different parts of our Empire are now working are in a very large measure Constitutions which have been settled on the soil where they were to operate, by the people who were to live under them. The Dominion of Canada, which, in Section 2 of the constituent Act, is specially referred to, lives, it is true, under a Constitution which is contained in an Imperial Act; but that Imperial Act did nothing more than embody in legislative form the great collection of Resolutions which had been arrived at in Quebec as a result of long debate and ultimate agreement between the Canadians themselves. The Constitution of Australia is not to be found in any enacting Section of any British Act of Parliament at all. The Constitution of Australia is scheduled to a Statute of 1900, in exactly the same way in which it is proposed that this Irish Constitution should be scheduled to this present Bill. Perhaps the most remarkable case of all is the most recent, for the Constitution of the Union of South Africa was at length arrived at as the result of discussion in South Africa itself, and it was carried through this House, within the recollection of a good many hon. Members, in the year 1909, without the alteration of a single sentence.

It may be suggested that these instances are not exactly in point, because they are all instances of a union which is being effected between areas that

hitherto have not been so closely federated; but the principle that Constitutions in our Empire have usually been found to have a permanent basis in the cases where they have been arrived at and settled on the soil affected by them, is by no means limited to the different Federal unions under the British Crown. I believe it would be true to say that Constitutions which promote prosperity and loyalty, and which have been found to be lasting Constitutions for subordinate States in our Empire, have, almost without exception, either actually or virtually, been formed by those who were to live under them themselves. I think that that circumstance may well be set against some of the gloomy records and forebodings of the hon. and gallant Gentleman, for, at any rate, there is a real element of hope and confidence here, in that this Constitution is not a Constitution which the British Parliament formulates and offers to confer upon Ireland; it is a Constitution which Irishmen themselves have drawn up, and which they now apply to the Imperial Parliament to ratify.

There is a second consideration which, I think, goes a long way. It is not immaterial to note that, since the Treaty was affected and was authorized by this House, there has been, undoubtedly, in this country of England, an increasing support for the scheme embodied in the Treaty. I have noticed, on examining the records, that, when the Bill for the ratification of the Treaty was proposed in the last Parliament, there was a Division, in which 58 Members of the late House voted in the minority. I do not think that that phenomenon will be repeated. At least two Members who voted in that minority have since, like sensible men, become members of His Majesty's present Government, and share the responsibility—I see one of them sitting on the Front Bench now—of recommending this Constitution to the House of Commons. I am the more glad

therefore, to learn from the hon. and gallant Gentleman who has just spoken that, so far as he is concerned, and, I assume, so far as his Friends are concerned, they do not propose to divide the House on this Motion.

But there is a third consideration, and I do not think the hon. and gallant Gentleman's view of the matter is the one which best corresponds with the information which greeted many of us from Ireland. I do not believe that the situation in Ireland is going from bad to worse. On the contrary, there are very strong reasons for hoping and supposing that, since the Treaty was signed, the situation as regards acceptance of the Constitution has improved. Let me call attention to these two or three facts. The Treaty was signed on 6th December of last year. When the question of the ratification of that Treaty came before the Dáil, as it did very shortly afterwards, it was approved only by the very narrowest majority. It was approved only, I think, by a majority of 7, 64 voting in favour and 57 against it. That was the situation in the very part of the country which is to be affected by this Constitution less than a year ago, and it is surely obvious that the situation, instead of getting worse, is, in fact, becoming very considerably better. When the elections took place in Southern Ireland last midsummer, the result of them, as the House knows well, was substantially to increase the demonstration of support for the Treaty. Recent divisions which have taken place in the Dáil have shown larger majorities still.

There was a very tragic event which occurred in August last which, I believe, did more to consolidate the opinion of Southern Ireland in favour of this Treaty than all the arguments which have been addressed in support of it. When, within the space of a fortnight, Arthur Griffith died and Michael Collins met his violent death, that tragic combina-



tion of circumstances did more to consolidate the opinion of Southern Ireland in favour of accepting this Constitution and honourably working under it even than the coldness which they exhibited in negotiation, and I believe it to be a wholly false picture of the present state of Irish opinion to suggest that they are not prepared to accept this Constitution and to work it honestly and honourably. As far as any indications known to me are concerned, the ratification of this Constitution is not opposed, apparently, by the Southern Unionists of Ireland, who suffered terribly in recent months and years, but who, none the less, do not apparently resist that which the House is now asked to accomplish.

That being so, the question really comes back to the simple and practical question which the Prime Minister put in his opening remarks. I was amused to notice that the Prime Minister does that which statesmen always do when they refer to the legal profession. He gave the House to understand that the law was a mystery which no business man could ever hope to fathom. Then he attempted to put forward a very admirable, very complete and perfectly convincing argument, such as any lawyer would at once accept, to prove that the Constitution was within the Treaty.

SIR F. BANBURY: He had been told it by a lawyer.

SIR J. SIMON: I ask the House to observe how simple it is. The truth is, as I have often had occasion to observe, that there is nothing in this world so technical as a layman who is trying to talk law, and there is nothing in the world so simple as the legal principle which lies at the bottom of the solution of a question such as the question whether this Constitution is within the Treaty. The Prime Minister, in a sentence, put a conclusive argument. It is, I apprehend, impossible for any Constitutional student, whether lawyer or layman, to suggest that this Constitution is not within the Treaty if, by the

express terms of the document, there were anything in any of its Clauses which went beyond the terms of the Treaty 'any such excess is here and now declared to be void and of none effect'.

I should like to say one word on two or three of the detailed points which the hon. and gallant Gentleman raised. First of all, he was concerned because of the Article in the Treaty which deals with Irish citizenship. I do not wish to take a part in the Debate which would be more properly taken by the Attorney-General—and those who know the hon. Gentleman will know that there is no lawyer in England more competent to give us guidance and sound reasoning on a subject of this sort—but it really is fallacious to suppose that in the British Empire, as it exists to-day, there are not many cases in which citizenship in some part of our Dominions is not the same thing as British citizenship here at home. There is at least one case, which will be known to those whose duty it is to study such things, which occurred during the War, in which a man who was admittedly an Australian citizen, declared to be such by Australian law, was none the less interned in this country as an enemy alien, and was declared to be rightly interned under the Regulations then in force. It is not a fact, therefore, that there is a complete correspondence between citizenship in every part of the Empire and citizenship here at home. It is much to be desired that there should be, and in the last Naturalization Act, for which the Government of which I was a member was responsible, there is a Section which provides that the different Dominions of the Crown, of which Southern Ireland will now be one, are able to adhere to our own rules if they choose to declare their willingness to do so.<sup>1</sup> That, I think, is the real answer about citizenship. Then the hon. and gallant

<sup>1</sup> British Nationality and Status of Aliens Act, 1914, s. 8; Dicey and Keith, *Conflict of Laws* (ed. 5), Rule 33.

Gentleman was concerned about Article 49, which provides that:

Save in the case of actual invasion, the Irish Free State shall not be committed to active participation in any war without the assent of its Parliament.

Would it not be just as well that in this matter we should recognize how the facts really stand? It is only a month or two ago that the late Government in this country, whether wisely or unwisely I do not stop to inquire, actually sent out messages to the different Dominions of the Empire in order to inquire what measure of support they would be prepared to give to the Mother Country in the unhappy event of a new war. What is the good after that of not facing the fact that, as our Empire grows, the great Dominions of the Crown are Dominions which give us their support and assistance, not because we are in a position to compel them to do so, but because they are willing to give us that active support in every case where our cause is just?

I take the third example, the question of appeals to the Privy Council, a rather technical subject really, but the hon. and gallant Gentleman, I think, was not justified in his criticism. The truth is that both in Australia and in South Africa there have been restrictions put upon appeals to our Privy Council here, which are at least as strict as the restriction which is to be found in this Constitution. This Constitution preserves the right to appeal to the Privy Council by what is called special leave. It gets rid of the right of appeal without special leave. That is exactly the situation of the Union of South Africa to-day, with this additional provision, that in the case of the Union of South Africa the Parliament of South Africa has reserved the power at any time by further legislation of its own to cut down the subjects on which even special leave may be given. I take these three examples, because they seem to me examples which can be dealt with very

fairly and summarily to show that in these matters the Constitution is not open to objection. I recognize to the full that the Constitution contains a number of matters which were not likely to be inserted in it if it was drawn up by Englishmen. That is perfectly true. But what we have in this matter to realize is that the House of Commons, by confirming this Constitution, is taking that bold step which the right hon. Gentleman the Member for West Birmingham (Mr. Austen Chamberlain) described the other day as a great act of daring faith.

I should like to make one reference to the past. By passing this Irish Free State Constitution, the Imperial Parliament is definitely abandoning the attempt to govern Ireland at Westminster, and it is definitely preparing for a solution on the basis of Dominion Home Rule. It is nearly thirty years ago since Mr. Joseph Chamberlain, speaking in this House on the First Reading of the second of Mr. Gladstone's Home Rule Bills, objected to that Bill, and made this observation:

Does anybody doubt that if Ireland were a thousand miles away from England, she would have been long before this a self-governing Colony?

Mr. Joseph Chamberlain went on to argue that the Bill of 1893 was a dangerous Measure because, he said, it attempts to draw a line at a place where a line can never permanently rest. It was a Bill, he thought, which concedes a certain measure of autonomy, and at the same time leaves things in a state of unstable equilibrium because it withholds full autonomous rights. The most important thing to notice about this Constitution is that that criticism, which has inspired so much of the opposition to Home Rule schemes, is certainly met by this present Measure, for the most striking feature of this Constitution is that it completely confers upon Ireland the status of a British Dominion. As to proximity, I think the last thirty years have intro-

duced new considerations which most of us would be willing to recognize. The march of British science has really brought all the Dominions of the Crown in one sense into much closer touch with the Mother Country, and on the other hand experience, both in peace and in war, has shown to this country the danger of facing in Ireland a community, the majority of which protest against the treatment of Irish affairs by a London Parliament, and regard themselves as unwilling subjects of English rule. That danger is intensified by the fact that there are only 60 miles of sea between ourselves and the sister island. It seems to me that the part which was taken only a year ago by the right hon. Gentleman the Member for West Birmingham who, I think, is sitting now in the seat from which his distinguished father delivered the speech to which I have referred, when he explained his own reason for his own change of view, is one which we might well take as an example of statesmanship in facing this new situation. When the hon. and gallant Gentleman asked us to face the facts, these are the facts which he must face. When he asks us to consider what is the foundation upon which we are building, I reply that the foundation is that which was pointed out by the right hon. Gentleman the Member for West Birmingham (Mr. Austen Chamberlain) in the speech to which I have referred. In that speech at the Unionist conference, twelve months ago, dealing with the grant of self-government to the Transvaal, he used these words:

By a great act of daring faith they conferred upon our recent enemies in the Transvaal and the Orange Free State on the moral of our victory, full self-government. I voted against them. I thought it a rash and wicked thing to do. If we could have seen further into the future, ~~is~~ I could have voted in that Division with the knowledge I have to-day, I should have known that that great act of faith was not, as I thought, a destruction of our policy, but its completion and its fulfilment.

In discussing Irish affairs there is no section of this House that can hold itself to be always wise or completely blameless. Do not let us on any side of the House enter into competition either of criticism or of self-praise. Let us, at any rate, do this one thing which it is in our power to do in order to give the whole Irish situation its best chance—a thing that was done by this House when it passed unanimously the British North America Act, when it passed unanimously the Commonwealth of Australia Act, when it passed unanimously the Union of South Africa Act; let us to-day, with united voice and without any dissent, wish God speed to the Constitution which is thus submitted for our ratification.

7. *Douglas Hogg, House of Commons, November 27, 1922*

During the three days that I have had the honour of sitting in this House, I have heard more than one hon. Member appeal to the indulgence of the House. I hope I shall not be trespassing unduly if I begin by saying that I am conscious that no Member has more need to appeal for that indulgence than I myself. I should like to assure the House that if I do make mistakes, it will be due to inexperience and to no intentional disregard of the rules of the House or the traditions which inspire them. I have listened, I hope intelligently, and certainly attentively, to the criticisms which have been put forward against the Constitution which this Bill seeks to enact. I have followed the Articles which are particularly impugned. My hon. and gallant Friend the Member for Burton (Colonel Gretton) began by telling us that he did not propose to move the rejection of this Bill or to vote against it. He quite correctly proceeded to point out certain respects in which Articles of the Treaty did not seem to him to conform with Articles of the Constitution. I am going, I hope, to deal with those difficulties. After going through the

Constitution, the hon. and gallant Member went on to point out that in his view it was very doubtful with whom we were making this Treaty. He questioned whether the Constitution were a final settlement, and pointed out instances of disorder in Ireland. He told us, as I fear may be true, that there are many people in Ireland who desire to see this Treaty annulled.

I hope my hon. and gallant Friend will forgive me if I do not follow him in that part of his speech, because it seems to me that those arguments were better directed to the question of the rejection of the Bill rather than to the matter which he himself said was the relevant matter, namely, whether the Constitution and the Treaty were in accord. I would only say this, that if it be true, as I fear it is true, that there are disorders in Ireland; if it be true, as I think it may be true, that many people in Ireland wish to see this Treaty annulled, there could be no better way of fomenting disorder and of playing into the hands of those who wish to see the Treaty annulled than to fail to pass this Bill. You would thereby leave us in the position that, by Article 17 of the Treaty, the Provisional Government would cease to have any power in Ireland on the 6th December; we should have nothing erected in the way of organized government to take its place, and those who opposed the Treaty in Ireland would be able to say that the British Government had once again played false with them.

I turn to the detailed criticisms which have been brought forward this evening. The first Article which was attacked was Article 1 of the Constitution—the Article which provides that

The Irish Free State is a co-equal member of the community of nations forming the British Commonwealth of Nations.

It was said that whereas in the Treaty the expression was 'the British Empire', in this Article the

expression is 'the British Commonwealth of Nations', and that that was a new phrase, which meant something different. I think I can alleviate the anxiety of my hon. Friends if I point out that the expression is taken from the Oath of Allegiance, which is to be found in the Treaty itself, because if we look at the Treaty it is expressly provided that the Oath of Allegiance to be taken by every Member of the Irish Houses of Parliament is to be in a stipulated form, which ends by reciting the adherence of Ireland to, and her membership of, 'the group of nations forming the British Commonwealth of Nations'—exactly the same phrase as we have in Article 1. I do not think, therefore, we need be alarmed by the prospect that Article 1 is different from the Treaty. The next Article attacked is Article 2, in which it is declared that

All powers of government and all authority, legislative, executive, and judicial in Ireland, are derived from the people of Ireland.

It was pointed out that the phraseology there is different in some degree from the phraseology in some of the older Constitutions, which have been given to the various self-governing Dominions. I am not sure that that in itself could fairly be used as an instance of the difference of phrase, which grows up with the difference of conception as to what constitutes the British Empire and the relations of the Dominions to this country, but I think my hon. Friends need not be afraid of the meaning or the effect of the Article when they remember that Article 2 is only one Article, which has, of course, as the hon. and learned Member for York (Sir J. Butcher) will realize as a lawyer, to be read in conjunction with the other Articles of the Constitution. We find that under Article 12, the legislative authority is vested in the Government and two Houses; that in Article 41 it is provided that the representative of the Crown may withhold the



King's Assent, or reserve any Bill for the signification of the King's pleasure, provided that he shall act in accordance with the constitutional usage governing the like withholding of assent or reservation in Canada; and that Article 51 provides that 'the Executive Authority of the Irish Free State is hereby declared to be vested in the King'. With those stipulations embodied in the Constitution I do not think my hon. Friends need be under any apprehension that the Constitution can be used legally to set up a Republic.

I pass to Article 3, which has been the subject of considerable attention. It has been stated that Article 3 creates a status unknown hitherto to the British Constitution or to the Constitution of any State within the King's Dominions. In fact, Article 3 has no such far-reaching effect as my hon. Friends seem to fear. There can be no doubt at all, that whether you go to Australia or to Canada for your parallel, you will find in either of those self-governing Dominions that British subjects sometimes are, and sometimes are not granted the right of the franchise, and granted what may loosely, perhaps, be called the status and privilege of citizenship. The right hon. and learned Member for Spen Valley (Sir J. Simon) referred to the case in which it was held only two years ago, in the British Court of Appeal, that a German who had been naturalized in Australia, and therefore in Australia was a British subject, when he came to England was an alien enemy. The hon. and learned Member for York said that the phrase 'Irish citizen' was a phrase unknown to the British law, and that we should not find in Canada or any other self-governing Dominion any such phrase. I have had the industry to look up the Canadian Statutes, and I find that my hon. and learned Friend is mistaken in that view, because if he will look to the Immigration Law of Canada, which was passed as long ago as 1910, he will find

the phrase 'Canadian citizen' used in that Act. It is defined in that Act, and there are a variety of provisions which give certain privileges to Canadian citizens which are not accorded to other British subjects. It seems to me, therefore, impossible to say that there is anything alarming in finding in the Irish Free State a phrase used to define people who have certain privileges in the Irish Free State, which has been used at least for twelve years past in Canada, the place which is, admittedly, taken as the model of the Irish Free State Constitution.

The next matter which was criticized was Article 5. The hon. and gallant Member for Burton (Colonel Gretton) pointed out that the stipulation as to titles of honour which is contained in Article 5, namely, that they cannot be conferred on a citizen of the Irish Free State except with the approval, or upon the advice of the Executive Council of the State, was not to be found in any Constitution. I believe he was quite right in saying it was not to be found in any Constitution, but he is mistaken if he thinks that it embodies any new constitutional theory. As long ago as 1918, this very point was raised by the Dominion of Canada, and the responsible Ministers of the Crown at that time gave to the responsible Ministers of Canada an assurance in the very terms of Article 5 of this Constitution.<sup>1</sup> I pass to the next Article attacked, which I am glad to say is as far on as Article 49. That is the Article which provides that:

Save in the case of actual invasion, the Irish Free State shall not be committed to active participation in any war without the assent of the Irish Parliament.

My hon. Friends called attention to the provision of the Treaty which provides that:

The Government of the Irish Free State shall afford, to

<sup>1</sup> See Keith, *Responsible Government in the Dominions* (1928), ii, 1020, 1021. The Free State, like Canada, does not recommend the grant of honours. So also in the Union, and the same rule is followed by Australian Labour governments.

His Majesty's Imperial Forces in time of war, or of strained relations with a foreign Power, such harbour and other facilities as the British Government may require for the purposes of coastal defence.

There is really no inconsistency between the two Articles. The stress, of course, in Article 49, is on the word 'active' participation. It does not say, and does not mean, that the Irish Free State is not to give the harbour facilities which they have undertaken to give. What it does mean to say, and what it does in fact say, in my opinion as a lawyer, is that the Irish Free State shall not be committed to active participation, that is to say, to become actively engaged by raising and joining fighting forces in any war, without its assent. If there were any doubt about it, we should find at once the value of Clause 2 of the Act which the Irish Free State passed, and which was referred to by my right hon. Friend the Member for the City of London (Sir F. Banbury)—the Article which provides that:

The said Constitution shall be construed with reference to the Articles of Agreement for a Treaty between Great Britain and Ireland set forth in the Second Schedule which are hereby given the force of law.

I am sure the hon. and learned Member for York would be the last to suggest that any lawyer who had that Clause before him, and had to glance through Article 49, in the light of Clause 7 of the Treaty, would have any doubt at all as to the effect of the words 'active participation'.

I pass now to what is perhaps one of the most serious matters which have engaged the attention of those who have criticized the Bill—I mean Article 66 with regard to the Privy Council. I think the right of appeal to the Privy Council is a matter to which probably the great majority of our Members on this side of the House would attach the greatest importance, and I do not think that if there were any doubt about it, it ought to be left in

doubt; but in my judgement there is none. The legal position, as I understand it, is this. Every self-governing Dominion necessarily has, unless it has been taken away, as part of its constitutional relationship to the Crown, the right of the Crown to grant leave to appeal to the Privy Council in any case in which the Crown thinks fit so to do. That has been laid down as being the undoubted prerogative of the Crown in the Privy Council itself, two or three times at least. That is, I think, a matter beyond all possible doubt. It is perfectly true that at this moment—at any rate, down to the enactment of the Treaty—there was no right of appeal to the Privy Council, because the Crown exercised its right of appellate jurisdiction through the House of Lords. But this Treaty, by its express terms, puts the Irish Free State into the position of a self-governing Dominion, and expressly provides that the position of the Irish Free State in relation to the Imperial Parliament and Government and otherwise shall be that of the Dominion of Canada, and the law, practice, and constitutional usage governing the relationship of the Crown to the Dominion of Canada shall govern their relationship to the Irish Free State.

The moment you enact that, it necessarily follows you are putting Ireland into the position in which the appeal which formerly lay to the House of Lords, now lies to the Privy Council, and the relationship of the Crown to the Dominion of Canada undoubtedly is—I am speaking here in the presence of lawyers on both sides of the House, and I know they will all agree with me—that the Crown has a right, at least when it chooses in any given case, to give leave to appeal to the Privy Council.<sup>1</sup> That right is exercised through the Judicial Committee of the Privy Council under the statutes which create

<sup>1</sup> This view was reiterated by Sir T. Inskip, House of Commons, November 20, 1931, but he admitted that the Irish view differed. See *Performing Right Society Ltd. v Bray Urban District Council*, [1930] A.C. 377.

that Judicial Committee, and the moment you enact this Constitution and this Treaty you necessarily give to Ireland and to an Irish citizen the right of applying to the Privy Council that right to appeal which every Canadian citizen has at this moment. If Article 66 were not in, I am inclined to think that there would still be a right of appeal to the Privy Council, because it has been held more than once in the Privy Council that you cannot take away that prerogative of the Crown except by express words. But in order to prevent any doubt upon the matter, you have, in Article 66, the express provision:

Provided that nothing in this Constitution shall impair the right of any person to petition His Majesty for special leave to appeal from the Supreme Court to His Majesty in Council, or the right of His Majesty to grant such leave.

Having that proviso there, there can be no possible doubt at all that the prerogative right of the Crown which exists in the case of Canada and other self-governing Dominions is preserved in the case of Ireland. I think, therefore, that the apprehension of my hon. and learned Friend, quite rightly brought forward for consideration, really turns out not to have any foundation.

I think that exhausts the particular Articles of the Constitution which were attacked. But my right hon. Friend the Member for the City of London (Sir F. Banbury) propounded one or two other conundrums. [*Laughter.*] I gather, although my Parliamentary experience is very scanty, that that is nothing new. The questions which he has put to me were these: He said, first of all, that there was in this second Clause of the Irish Bill the provision that the Articles of Agreement were given the force of law, and that the Constitution, in so far as it had reference to the Articles of Treaty, would be null and void, and, said he, what is the object of having that

in at all if the Constitution is all right? The answer is that even lawyers sometimes make mistakes, and in order to prevent any possibility of a mistake arising in this case, there has been expressly inserted this stipulation which of itself involves that, if such a mistake should ever be discovered, then it is the Treaty which prevails and not the Constitution, and that the Constitution, to the extent to which it is in conflict with the Treaty, becomes null and void and inoperative. My right hon. Friend went on to say, who was going to decide whether the Constitution is in conflict with the Treaty or not, and if I may say so, I entirely agree that that is a very important point which ought to be cleared up. It is cleared up! Article 65 of the Constitution provides:

The judicial power of the High Court—

That is the Irish High Court, not Parliament, as my hon. and learned Friend the Member for York (Sir J. Butcher) thought—

shall extend to the question of the validity of any law having regard to the provisions of the Constitution . . .

- Then, Article 66 provides:

The Supreme Court of the Irish Free State—

that is the appellate Court—

shall with such exceptions (not including cases which involve questions as to the validity of any law) and subject to such Regulations . . . have appellate jurisdiction from all decisions of the High Court.

So that we get an express provision there that any question as to the constitutionality of any law must go to the High Court, and then we get, under Article 66, the proviso to which I have already called attention, under which the prerogative right of the Crown to grant leave to appeal to the Privy Council is preserved. Therefore, in any case of doubt the Privy Council has the right to say that the question should come to it for decision and its decision will be final.

8. *Agreement amending and supplementing the Articles of Agreement for a Treaty between Great Britain and Ireland, December 3, 1925*<sup>1</sup>

Whereas on the sixth day of December nineteen hundred and twenty-one Articles of Agreement for a Treaty between Great Britain and Ireland were entered into:

And whereas the said Articles of Agreement were duly ratified and given the force of law by the Irish Free State (Agreement) Act, 1922, and by the Constitution of the Irish Free State (Saorstát Eireann) Act, 1922:

And whereas the progress of events and the improved relations now subsisting between the British Government, the Government of the Irish Free State, and the Government of Northern Ireland, and their respective peoples, make it desirable to amend and supplement the said Articles of Agreement, so as to avoid any causes of friction which might mar or retard the further growth of friendly relations between the said governments and peoples:

And whereas the British Government and the Government of the Irish Free State being united in amity in this undertaking with the Government of Northern Ireland, and being resolved mutually to aid one another in a spirit of neighbourly comradeship, hereby agree as follows:

1. The powers conferred by the proviso to Article 12 of the said Articles of Agreement on the Commission therein mentioned are hereby revoked, and the extent of Northern Ireland for the purposes of the Government of Ireland Act, 1920, and of the said Articles of Agreement, shall be such as was fixed by subsection (2) of section one of that Act.

2. The Irish Free State is hereby released from the obligation under Article 5 of the said Articles

<sup>1</sup> Confirmed by Imperial Act, 15 & 16 Geo. 5, c. 77, and Irish Free State Act, No. 40 of 1925.

of Agreement to assume the liability therein mentioned.

3. The Irish Free State hereby assumes all liability undertaken by the British Government in respect of malicious damage done since the twenty-first day of January nineteen hundred and nineteen to property in the area now under the jurisdiction of the Parliament and Government of the Irish Free State, and the Government of the Irish Free State shall repay to the British Government, at such time or times and in such manner as may be agreed upon, moneys already paid by the British Government in respect of such damage, or liable to be so paid under obligations already incurred.

4. The Government of the Irish Free State hereby agrees to promote legislation increasing by 10 per cent. the measure of compensation under the Damage to Property (Compensation) Act, 1923, in respect of malicious damage to property done in the area now under the jurisdiction of the Parliament and Government of the Irish Free State between the eleventh day of July, nineteen hundred and twenty-one, and the twelfth day of May, nineteen hundred and twenty-three, and providing for the payment of such additional compensation by the issue of Five per Cent. Compensation Stock or Bonds.

5. The powers in relation to Northern Ireland which by the Government of Ireland Act, 1920, are made powers of the Council of Ireland, shall be and are hereby transferred to and shall become powers of the Parliament and the Government of Northern Ireland; and the Governments of the Irish Free State and of Northern Ireland shall meet together as and when necessary for the purpose of considering matters of common interest arising out of or connected with the exercise and administration of the said powers.

6. This Agreement is subject to confirmation by the British Parliament and by the Oireachtas of the



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Irish Free State, and the Act of the British Parliament confirming this Agreement shall fix the date [April 1, 1926] as from which the transfer of the powers of the Council of Ireland under this Agreement is to take effect.

Dated this 3rd day of December, 1925.

Signed on behalf of the British Government.

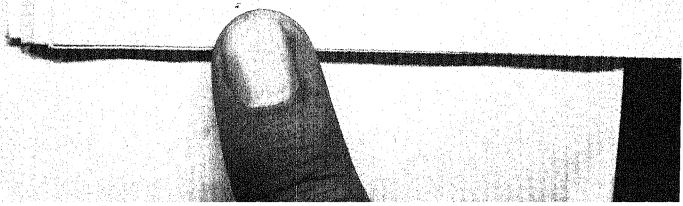
STANLEY BALDWIN.  
WINSTON S. CHURCHILL.  
W. JOYNSON-HICKS.  
BIRKENHEAD.  
L. S. AMERY.

Signed on behalf of the Government of the Irish Free State.

LIAM T. MACCOSGAIR.  
KEVIN O'HIGGINS.  
EARNÁN DE BLAGHD.

Signed on behalf of the Government of Northern Ireland.

JAMES CRAIG.  
CHARLES H. BLACKMORE,  
Secretary to the Cabinet of  
Northern Ireland.



IV .

THE DEVELOPMENT OF THE  
INTERNAL SOVEREIGNTY OF THE  
DOMINIONS AND OF INTER-IMPERIAL  
EQUALITY, 1923-31



## I. THE POSITION OF INDIANS IN OTHER PARTS OF THE EMPIRE

### 1. *Imperial Conference, 1923*

THE position of Indians in other parts of the Empire was reviewed by the Conference in the light of the developments which have taken place since the Resolution which formed part of the Proceedings at the 1921 Conference.<sup>1</sup> The subject was opened by a general statement from the Secretary of State for India as Head of the Indian Delegation. He explained that the intensity of feeling aroused in India by this question was due to the opinion widely held there (which, however, he did not himself share) that the disabilities of Indians were based on distinction of colour and were badges of racial inferiority. This statement was followed by a full presentation of the case on behalf of India by Sir Tej Bahadur Sapru and His Highness the Maharajah of Alwar.

It was found possible to publish these speeches, and those made in the course of the discussions by the Prime Minister of Great Britain, the Secretary of State for the Colonies, the Dominion Prime Ministers, and the Minister of External Affairs of the Irish Free State, shortly after the speeches had been delivered.<sup>2</sup> In this respect the procedure differed from that at the Conference of 1921 when only the Resolution adopted was made public. It is unnecessary in the present Report to do more than refer to the main proposal made on behalf of the Indian Delegation and the views expressed and conclusions reached with regard to it. The Indian proposal was to the effect that the Dominion Governments concerned, and the British Government for the Colonies and Protectorates, should agree to the

<sup>1</sup> Cmd. 1474, p. 8.

<sup>2</sup> See Appendix V in Cmd. 1938.

appointment of Committees to confer with a Committee appointed by the Indian Government as to the best and quickest means of giving effect to the Resolution of the 1921 Conference.

In the case of the Union of South Africa, which was not a party to the 1921 Resolution, Sir Tej Bahadur Sapru expressed the hope that the Union Government would agree to the Government of India sending an agent to South Africa who would protect Indian nationals there, who would serve as an intermediary between them and the Union Government, and who would place the Indian Government in full possession of the facts regarding Indian nationals in South Africa.

The Conference expressed its high appreciation of the able and moderate manner in which Lord Peel and his colleagues had presented the Indian case. The opinions expressed and the conclusions reached with regard to the above suggestions were, in brief, as follows:

The Prime Minister of Canada observed that, so far as he knew, Indians now domiciled in Canada did not suffer any legal or political disability in eight out of the nine provinces of Canada; as regards the ninth province—British Columbia—he was not aware of any legal disability, and even the political disability that existed in the matter of the exercise of the franchise does not apply to all Indians because the federal law relating to the franchise lays it down that any Indian who served with His Majesty's military, naval, or air forces is entitled to the franchise. He explained the present difficulties in conceding the franchise to Indians generally in British Columbia which are due not to distinction of colour but to economic and complex political considerations, and he reiterated what he had already said to Mr. Sastri on the occasion of the latter's visit to Canada in 1922, namely, that the

question whether natives of India resident in Canada should be granted a Dominion Parliamentary Franchise on terms and conditions identical with those which govern the exercise of that right by Canadian citizens generally was necessarily one which Parliament alone could determine, and that the matter would be submitted to Parliament for consideration when the Franchise Law comes up for revision.

Mr. Mackenzie King added that he was somewhat doubtful whether the visit of a Committee appointed by the Government of India would make it easier to deal with this problem in Canada, but that, should it be desired to send a Committee, the Canadian Government would readily appoint a Committee to confer with the Committee from India.

The Prime Minister of the Commonwealth of Australia explained the principles underlying the present attitude of Australia on this question. He stated that the representatives of every shade of political thought in Australia had shown sympathy with the claim that lawfully domiciled Indians should enjoy full citizen rights, and that he believed that public opinion was ready to welcome, so far as concerned the position of such Indians, any measure conceived in the interests of the Empire as a whole.

The Commonwealth had the right to control the admission to its territories of new citizens, and its immigration policy was founded on economic considerations. He felt that, in view of the position which existed in Australia, there was no necessity for a Committee, but assured the Indian representatives that he would consult his colleagues on his return to Australia as to what action should be taken in connexion with the Resolution of the 1921 Conference.

The Prime Minister of New Zealand said that the New Zealand Government would welcome the visit

of a Committee from India such as had been suggested should this be desired ; New Zealand practically gave the natives of India now resident in the Dominion the same privileges as were enjoyed by people of the Anglo-Saxon race who were settled there.

The Prime Minister of the Union of South Africa intimated that, so far as South Africa was concerned, it was not a question of colour, but that a different principle was involved. He stated that the attitude of thinking men in South Africa was not that the Indian was inferior because of his colour or on any other ground—he might be their superior—but the question had to be considered from the point of view of economic competition. In other words, the white community in South Africa felt that the whole question of the continuance of Western civilization in South Africa was involved. General Smuts could hold out no hope of any further extension of the political rights of Indians in South Africa and, so far as the Union was concerned, he could not accept Sir Tej Bahadur Sapru's proposal.

The Secretary of State for the Colonies, on behalf of the British Government, cordially accepted the proposal of Sir Tej Bahadur Sapru that there should be full consultation and discussion between the Secretary of State for the Colonies and a Committee appointed by the Government of India upon all questions affecting British Indians domiciled in British Colonies, Protectorates, and Mandated Territories. At the same time the Duke of Devonshire was careful to explain that, before decisions were taken as a result of discussions with the Committee, consultations with the local Colonial Governments concerned, and in some cases local inquiry, would be necessary.

Further, while welcoming the proposal, the Duke reminded the Conference that the British Government had recently come to certain decisions as to



Kenya, which represented in their considered view the very best that could be done in all the circumstances. While he saw no prospect of these decisions being modified, he would give careful attention to such representations as the Committee appointed by the Government of India might desire to make to him.

Sir Tej Bahadur Sapru, while taking note of the above statement of the Duke of Devonshire, desired to make plain that the recent Kenya decision could not be accepted as final by the people of India.

The Secretary of State for India, summarizing as Head of the Indian Delegation the results attained, pointed out that the discussion had demonstrated that it was a mistake to suppose that Indians throughout the Empire were given an inferior status or that such disabilities as might be felt to exist were based on race or colour.

*2. Statement by Hon. D. F. Malan, House of Assembly, Union of South Africa, February 21, 1927*

*Results of Conference between the Governments of India and the Union, Capetown, December 17, 1926-January 11, 1927*

Both Governments reaffirmed their recognition of the right of South Africa to use all just and legitimate means for the maintenance of Western standards of life. The Union Government recognized that Indians domiciled in the Union who were prepared to conform to Western standards of life should be enabled to do so. For those Indians in the Union who desired to avail themselves of it, the Union Government would organize a scheme of assisted emigration to India or other countries where Western standards were not required.

Union domicile would be lost after three years' continuous absence from the Union, in agreement with the proposed revision of the law relating to

domicile which would be of general application. Emigrants under the assisted emigration scheme desiring to return to the Union within the three years would only be allowed to do so on refunding to the Government the cost of the assistance received. The Government of India recognized their obligation to look after such emigrants on their arrival in India. The admission into the Union of the wives and minor children of Indians permanently domiciled in the Union would be regulated by paragraph 3 of Resolution 2 of the Imperial Conference of 1918.

In the expectation that the difficulties with which the Union had been confronted would be materially lessened by the agreement, and in order that it might come into operation under the most favourable auspices and have a fair trial, the Union Government had decided not to proceed further with the Areas Reservation and Immigration and Registration (Further Provisions) Bill.<sup>1</sup>

The two Governments had agreed to watch the working of the agreement and to exchange views from time to time as to any change which experience might suggest. The Government of the Union had requested the Indian Government to appoint an agent in the Union in order to secure effective and continuous co-operation between the two governments.<sup>2</sup>

<sup>1</sup> This measure contemplated exclusion of Indians from areas hitherto open for settlement in Natal, and further restrictions on immigration.

<sup>2</sup> A further Conference in 1932 resulted in an agreement on similar lines, but it is proposed to promote settlement of Indians outside India.

## II. THE BRITISH CONSTITUTION IN THE DOMINIONS: THE STATUS OF THE GOVERNOR-GENERAL OF CANADA AND THE DISSOLUTION OF 1926

*The Rt. Hon. W. L. Mackenzie King, Ottawa,  
July 23, 1926<sup>1</sup>*

I ASK my honourable friends opposite: Do they think the power of a Prime Minister is derived from above, or that it comes from the people through their representatives in Parliament, who extend their confidence to a ministry that is able to retain the confidence of the House?

There was the position I took in Parliament with reference to His Excellency the Governor-General, that is the position I take here and now, that is the position which, as the Leader of the Liberal Party, I intend to take throughout this campaign. It is not the conduct, the honesty, or the personality of Lord Byng which in any particular is being called in question, but the constitutionality of a course of procedure in the relations of Governor-General and Prime Minister which lies at the very root of the whole system of responsible self-government under British parliamentary institutions, and which has a bearing upon constitutional government as wide as the British Empire itself. The issue would be the same whether any other living person held the high office of Governor-General and any other living person held the high office of Prime Minister. What makes it all-important is that the British constitution is founded on precedents as well as upon traditions, customs, statutes, and laws, and the precedent we are now considering goes to the very heart of self-government of the Dominions, and of equality

<sup>1</sup> For the circumstances in which this speech was delivered see p. xxiii, *ante*.

of status between the self-governing nations of the British Empire.

Let me return then to this course of procedure, the constitutionality of which has been called in question by the refusal of dissolution to the leader of one political party and the granting immediately thereafter of dissolution to the leader of another political party, for the constitutionality of which course of procedure, may I remind you, full responsibility has been assumed by Mr. Meighen, so that it is Mr. Meighen's conduct, not His Excellency's, that is being discussed.

As to my right to dissolution, all I wish to say is that not for over one hundred years in Great Britain, and never since Confederation in Canada, has a dissolution been denied a Prime Minister who has requested it. It is true the prerogative of dissolution is a royal prerogative, and as such is rightly assumed to attach to the Sovereign's representative in a self-governing Dominion. But as with other royal prerogatives, the discretionary power of the Crown, with respect to dissolution, is supposed to be exercised upon the advice of a responsible ministry, and the Sovereign who would be unwilling to accept advice so tendered him would, unless he wished to place his crown and throne in jeopardy, have to be very certain of finding a Prime Minister who would not only be willing, but also would be able to take the responsibility for his refusal of the advice tendered. That would mean, in the case of a refusal of dissolution, a Prime Minister who not only was willing, but who was able to demonstrate his ability when Parliament was in session to carry on its proceedings. As Prime Minister, Mr. Meighen was unable to carry on the proceedings of the late parliament for the space of three days. The moment the right to existence of his ministry was challenged, that moment its every member foresaw its inevitable doom.

I contend that my right to advise dissolution could not be challenged on constitutional grounds, and that if there ever was doubt as to the soundness of the advice tendered and of my right to have it accepted, that doubt was resolved in no uncertain manner by what took place within the three ensuing days.

Mr. Meighen seeks to defend the present departure from established British constitutional procedure on the ground that dissolution of Parliament was asked 'while a vote of censure was under debate'. I have already made clear, I hope, that no vote which could be termed a vote of censure, in the parliamentary use of that term, was under debate at the time dissolution was requested. Assume, however, for the sake of argument, that the Stevens amendment constituted a censure of the administration and that it had been carried while the late Liberal Government was in office, I would still under British constitutional practice have been entitled to ask for and receive a dissolution.

British constitutional history is full of precedents where governments have not only been afraid of censure, but have been actually censured by parliamentary vote, yet have asked for and obtained a dissolution of Parliament. I might cite in particular and as the most recent instance, the defeat of Mr. Ramsay MacDonald's Government upon a motion of censure based upon very serious assertions and which occurred while Parliament was in session and before Mr. MacDonald had been a year in office. It meant the third dissolution of the British Parliament within two years; notwithstanding, Mr. Ramsay MacDonald's request for dissolution was granted by His Majesty the King.

Please note that it was after the censure and condemnation and defeat of his own administration that, at the end of two-and-a-half days alleged existence of the ministry, Mr. Meighen was granted

a dissolution by His Excellency, the Governor-General.

As respects what I have just said as to the constitutional course of procedure in the relations of Governor-General and Prime Minister being an issue on the settlement of which in accordance with established British constitutional usage, precedents, and practice, rests the determination of whether Canada, as one of the nations of the British Commonwealth is to be regarded as a self-governing Dominion, possessing equality of status with other like units of the British Commonwealth or whether Canada is still to be regarded as possessing the status of a Crown Colony. I can perhaps not do better than to quote an opinion already given currency in the Press and which is that of the best known living authority on responsible government in the British Dominions. It is not a Canadian opinion but a British opinion; it is an opinion that has come wholly unsolicited; it is an opinion given to the British Press and the British public almost immediately after I had been refused dissolution and dissolution had been granted Mr. Meighen. Of Mr. Berriedale Keith, on July 1st, one of Mr. Meighen's temporary Ministers said in the House of Commons: 'We all know that Professor Keith is one of the most outstanding constitutional authorities in the British world to-day', which was quite true. Here is what Professor Keith says of the refusal of dissolution when requested by me of His Excellency the Governor-General on June 28th. I quote from a Canadian Press dispatch which appeared in the afternoon papers of Thursday, July 8, and the morning papers of the day following:

Lord Byng, in refusing the dissolution of parliament advised by Rt. Hon. Mackenzie King, has challenged effectively the doctrine of equality in status of the Dominions and the United Kingdom, and has relegated

Canada decisively to the colonial status which we believed she had outgrown.

Lord Byng's action affects not only Canada, for Canada is by constitutional law solemnly asserted in the Irish treaty to be the model for the Irish Free State. Therefore, despite the provisions of the Irish constitution, the Free State Governor-General is now legally empowered and constitutionally capable of disregarding the advice of his ministers. The matter then is one far transcending Canadian politics.

The whole weight of Dominion precedent since the Imperial Conference of 1911, when the Dominions first appeared on equal terms with the United Kingdom, tells directly against Lord Byng's decision.

The practice in South Africa and New Zealand since 1911 is entirely in accord with British usage. It is a matter for serious regret that Lord Byng should have ignored the new status of the Dominions as co-equal members of the British Commonwealth of Nations.

I hope Canadian and British audiences will observe, with respect to the passage I have just quoted, that it was first published in England, not in Canada, and that it is an eminent constitutional authority fully versed in the proprieties of British political controversy and not myself who makes mention of the name of His Excellency.

Though I am unable to admit that either the refusal to myself of a dissolution or the granting of a dissolution immediately thereafter to Mr. Meighen was a constitutional course of procedure, I am prepared to say that there may be circumstances in which a Governor-General might find subsequent justification for a refusal to grant a dissolution of parliament. Such might be the case, where Parliament is in session and the leader of another party having accepted the responsibility of the refusal of dissolution demonstrates after compliance with all constitutional obligations that he is able to carry on the business of Parliament by the majority he is in a position to command in the House of Commons.

Clearly any such possibility was not the case in the present instance.

Mr. Meighen says there is no constitutional issue. Let me tell the present Prime Minister that he will find before the present campaign is over that there is a constitutional issue greater than any that has been raised in Canada since the founding of this Dominion. It is a constitutional issue not raised by His Excellency the Governor-General, but by Mr. Meighen himself, and Mr. Meighen has only himself to thank that the issue has been raised, and that it overshadows everything else.

If the Customs matter were the all-important matter which Mr. Meighen would like the people to believe it is, and he desired to make it the issue in a campaign, why, when sent for, did he not advise His Excellency the Governor-General that he was unable to form a government and, therefore, for His Excellency to send again for me and let me have a dissolution? That was all he needed to do; that was the constitutional course for him to pursue, and if he had been half as chivalrous with His Excellency as His Excellency sought to be with him, that is the advice he would have tendered, and not made the Crown a party to a series of unconstitutional acts such as have not been paralleled, I believe, in the history of British parliamentary institutions.

#### PRIME MINISTER AND PARLIAMENT

Serious as is the issue which has been raised with respect to the relations of Prime Minister to Governor General, it pales into relative insignificance when compared with the issue of the relations of Prime Minister to Parliament raised by the actions of Mr. Meighen himself. To have become Prime Minister by accepting full responsibility for His Excellency's refusal to grant dissolution, knowing at the time, as Mr. Meighen full well did, that he could not



hope constitutionally to carry on, and that, as he himself later admitted, dissolution was necessary and inevitable, was bad enough. It is as nothing, however, in comparison with his unconstitutional behaviour as a Prime Minister, from the moment he assumed office under the Crown and proceeded to advise His Excellency, in daring, as he did, to ignore, defy, and insult the entire membership of both Houses of Parliament, when Parliament itself was actually in session. From this point on, the issue ceases to be one chiefly of the constitutionality of the relations of Governor-General and Prime Minister; it becomes one of the constitutionality of the relations of the Prime Minister and Parliament. In other words, it becomes in a yet larger way the all-important issue of the source from which all power of government is derived, the issue, when Parliament exists, of the supremacy of Parliament itself. The supremacy of Parliament, the rights, the dignities, the existence of Parliament have been challenged by the present Prime Minister in a manner that surpasses all belief.

For a period of two weeks including three days during which Parliament was in session, Mr. Meighen did not hesitate to advise His Excellency with respect to all Canada's domestic, inter-Imperial, and international affairs and to administer all the departments of the Government of Canada without a single minister sworn to office, save himself. He alone was the Government of Canada over that period of time. If that is not anarchy or absolutism in government I should like to know to what category political philosophy would assign government carried on under such conditions. Surely it will not be termed responsible self-government under the British parliamentary system.

What is the latest venture of all? What is the present position with respect to the defeated and discredited ministry?

It will be recalled that in the statement prepared by the Prime Minister, which was read by Sir Henry Drayton the leader of the House of Commons before its proceedings opened on Tuesday, June 29, it was said that the Prime Minister had decided 'to constitute and submit to His Excellency a temporary ministry composed of seven members who would be sworn in without portfolio and who would assume responsibility as acting ministers of the several departments': also, that 'so soon as prorogation takes effect Mr. Meighen will immediately address himself to the task of constituting a government in the method established by custom'.

As we now know, the late Parliament was brought to a precipitate close without prorogation. Mr. Meighen nevertheless has addressed himself 'to the task of constituting a government in the method established by custom'. He has grafted a few live limbs—I think they are all alive though some of them are pretty old—on to the dead trunk of a defeated ministry, which never had its roots in any legitimate soil, and the discredited ministry thus enlarged, and glorified by the name of 'the Cabinet', he now asks the people of this Dominion to endorse and support as the Government of Canada!

I believe that the people of Canada have more regard for the good name of their country and of their parliamentary institutions, not only in their own eyes but in the eyes of the other countries of the world, than to let themselves become a party to any such unheard of proceedings.

#### SUPREME IMPORTANCE OF ISSUE TO BRITISH COMMONWEALTH OF NATIONS

Here again may I make an appeal to British parliamentary usage, practice, and law. What Prime Minister, what individual in Great Britain, however exalted, or however arrogant, would ven-

ture to constitute himself the sole advisor of the Crown, the sole government of the country for a single day, let alone for a period of two weeks! I will not ask what Prime Minister in England, or anywhere else in the world would dare so to offend the sense of honour and dignity of a nation as Mr. Meighen has unblushingly done in his latest arrogant venture. And yet if there be equality of status between the Governments of Britain and the self-governing Dominions, there is not one of the nations that go to make up the British Commonwealth which is not equally being subjected to all the dangers inherent in such precedents, should the Canadian people place, as Mr. Meighen is asking them to place, their sanction upon conduct of the kind. That is why in the present contest the Constitutional issue surpasses all others in its significance and importance; why it constitutes an issue such as has not been raised in a British country since the days of the Petition of Right and the Bill of Rights.

We are the custodians of the honour of the British Crown and of the sanctity of the British Constitution not for Canada alone, but for Australia, for New Zealand, for Africa, for Newfoundland, for the Irish Free State, for India, yes, and for the British Isles themselves. The violation of its usages, its practices, its law in one part of the Empire cannot fail to have far-reaching reactions in every other part. Free representative institutions cannot be threatened in Canada without their being everywhere threatened. If Mr. Meighen's unconstitutional course is permitted to go unchallenged by the people of this country, then may we question on behalf of all self-governing British communities whether the British constitution may not become a phantom to delude to destruction, instead of being, as we believe it is, the day star of our dearest liberties.

## THE LINK OF EMPIRE

I have now come almost to the conclusion of what I have to say.

When after the last general elections<sup>1</sup> I advised His Excellency to let Parliament decide between Mr. Meighen and myself as to who should head the administration to carry on the government of Canada, I was neither trying to retain office at any price, nor to escape from office under circumstances of government that were bound to be uncertain, arduous and difficult. I was endeavouring to follow a strictly constitutional course in a manner which would help to preserve the high and noble traditions of Parliament and above all to maintain its supremacy. When I saw those traditions threatened, when I found the course becoming too difficult for any Prime Minister, and so advised His Excellency, and thereupon sought a dissolution of Parliament, I was again not seeking to retain office at any price or to escape from office under embarrassing circumstances. I was endeavouring to follow the constitutional course of appealing from Parliament to the people in a manner which would give to the people the right which is theirs at all times of saying how they shall be represented in Parliament, and by whom they shall be governed.

On each occasion I was upholding the Constitution of our country, a constitution which in part we have worked out for ourselves, but the fundamental principles of which we have inherited from Great Britain, a constitution which lies, I believe, at the very foundations of the British Empire. The present Prime Minister, I contend, has proven that for the sake of office, he is prepared to tear that constitution into shreds.

<sup>1</sup> October 29, 1925. The result gave the Conservatives the position of the strongest group, but on the opening of Parliament the Liberal government was sustained on a vote of 123 to 120, and received thereafter general support from the Progressive Party which held the balance of power.

What is the real link of Empire, the most enduring of the forces which unite as one British institutions in all quarters of the globe? What is the secret of loyalty to the British Crown and to the British Flag? What, if it is not the liberty and the freedom ensured under British parliamentary institutions and all that is bound up in what we know and reverence as the British constitution!

It is a strange mystical sort of thing, this British constitution that we love. It is partly unwritten; it is partly written; it finds its beginnings in the lore of the past, it comes into being in the form of customs and traditions, it is founded upon the common law; it is made up of precedents, of Magna Chartas, of Petitions and Bills of Rights, it is to be found partly in statutes and partly in the usages and practices of parliament itself. It represents the highest achievement of British genius at its best. No one has ever seen it; no one has ever adequately described it; yet its presence is felt whenever liberty or right are endangered, for it is the creation of the struggle of centuries against oppression and wrong, and embodies the very soul of freedom itself.

It is the principles of liberty and freedom embedded in the British constitution, and secured to those who live within its guarantees that have made men of many races and many climes a great brotherhood in name and in heart. To the people of Great Britain it is one thing. To the community of British nations which comprise the sister Dominions beyond the seas, it is the same thing, but something more. Scattered as they are amid the several oceans of the world, their coasts washed by the waters of many zones, it is the sheet anchor which holds all true to the little isles in the northern sea. The Crown and the Flag are symbols, symbols that we reverence and which help to keep us one; but in Canada, in Australia, in New Zealand, in South Africa, in Newfoundland, in Ireland, it is the British Constitution

that is the sustaining and enduring element in loyalty alike to the Crown and to the Flag. It is the magnet which counteracts all tendencies to separation from Britain, or to annexation to other lands. This is the constitution by which the Liberal party in Canada stands; and for which it is prepared to fight to-day.

In the name of our King and of our Country, I now appeal to my fellow Canadians, because of all that the British Constitution serves to inspire in Canada, of liberty, freedom, and loyalty, to vindicate its might and majesty at the polls.

### III. THE REPORT OF THE INTER-IMPERIAL RELATIONS COMMITTEE, IMPERIAL CON- FERENCE, 1926

#### 1. *The Status of Great Britain and the Dominions*

THE Committee are of opinion that nothing would be gained by attempting to lay down a Constitution for the British Empire. Its widely scattered parts have very different characteristics, very different histories, and are at very different stages of evolution; while, considered as a whole, it defies classification and bears no real resemblance to any other political organization which now exists or has ever yet been tried.

There is, however, one most important element in it which, from a strictly constitutional point of view, has now, as regards all vital matters, reached its full development—we refer to the group of self-governing communities composed of Great Britain and the Dominions. Their position and mutual relation may be readily defined. *They are autonomous Communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.*

A foreigner endeavouring to understand the true character of the British Empire by the aid of this formula alone would be tempted to think that it was devised rather to make mutual interference impossible than to make mutual co-operation easy.

Such a criticism, however, completely ignores the historic situation. The rapid evolution of the Oversea Dominions during the last fifty years has involved many complicated adjustments of old

political machinery to changing conditions. The tendency towards equality of status was both right and inevitable. Geographical and other conditions made this impossible of attainment by the way of federation. The only alternative was by the way of autonomy; and along this road it has been steadily sought. Every self-governing member of the Empire is now the master of its destiny. In fact, if not always in form, it is subject to no compulsion whatever.

But no account, however accurate, of the negative relations in which Great Britain and the Dominions stand to each other can do more than express a portion of the truth. The British Empire is not founded upon negations. It depends essentially, if not formally, on positive ideals. Free institutions are its life-blood. Free co-operation is its instrument. Peace, security, and progress are among its objects. Aspects of all these great themes have been discussed at the present Conference; excellent results have been thereby obtained. And, though every Dominion is now, and must always remain, the sole judge of the nature and extent of its co-operation, no common cause will, in our opinion, be thereby imperilled.

Equality of status, so far as Britain and the Dominions are concerned, is thus the root principle governing our Inter-Imperial Relations. But the principles of equality and similarity, appropriate to *status*, do not universally extend to function. Here we require something more than immutable dogmas. For example, to deal with questions of diplomacy and questions of defence, we require also flexible machinery—machinery which can, from time to time, be adapted to the changing circumstances of the world. This subject also has occupied our attention. The rest of this Report will show how we have endeavoured not only to state political theory, but to apply it to our common needs.



## 2. *The Special Position of India*

It will be noted that in the previous paragraphs we have made no mention of India. Our reason for limiting their scope to Great Britain and the Dominions is that the position of India in the Empire is already defined by the Government of India Act, 1919. We would, nevertheless, recall that by Resolution IX of the Imperial War Conference, 1917, due recognition was given to the important position held by India in the British Commonwealth. Where, in this Report, we have had occasion to consider the position of India, we have made particular reference to it.

## 3. *The Relations between the various parts of the British Empire*

Existing administrative, legislative, and judicial forms are admittedly not wholly in accord with the position as described in Section II of this Report [p. 161]. This is inevitable, since most of these forms date back to a time well antecedent to the present stage of constitutional development. Our first task then was to examine these forms with special reference to any cases where the want of adaptation of practice to principle caused, or might be thought to cause, inconvenience in the conduct of Inter-Imperial Relations.

### (a) *The Title of His Majesty the King*

The title of His Majesty the King is of special importance and concern to all parts of His Majesty's Dominions. Twice within the last fifty years has the Royal Title been altered to suit changed conditions and constitutional developments.

The present title, which is that proclaimed under the Royal Titles Act of 1901, is as follows:

'George V, by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India.'

- (b) The reservation of Dominion legislation, in certain circumstances, for the signification of His Majesty's pleasure which is signified on advice tendered by His Majesty's Government in Great Britain.
- (c) The difference between the legislative competence of the Parliament at Westminster and of the Dominion Parliaments in that Acts passed by the latter operate, as a general rule, only within the territorial area of the Dominion concerned.
- (d) The operation of legislation passed by the Parliament at Westminster in relation to the Dominions. In this connexion special attention was called to such Statutes as the Colonial Laws Validity Act. It was suggested that in future uniformity of legislation as between Great Britain and the Dominions could best be secured by the enactment of reciprocal Statutes based upon consultation and agreement.

We gave these matters the best consideration possible in the limited time at our disposal, but came to the conclusion that the issues involved were so complex that there would be grave danger in attempting any immediate pronouncement other than a statement of certain principles which, in our opinion, underlie the whole question of the operation of Dominion legislation. We felt that, for the rest, it would be necessary to obtain expert guidance as a preliminary to further consideration by His Majesty's Governments in Great Britain and the Dominions.

On the questions raised with regard to disallowance and reservation of Dominion legislation, it was explained by the Irish Free State representatives that they desired to elucidate the constitutional practice in relation to Canada, since it is provided by Article

2 of the Articles of Agreement for a Treaty of 1921 that 'the position of the Irish Free State in relation to the Imperial Parliament and Government and otherwise shall be that of the Dominion of Canada.'

On this point we propose that it should be placed on record that, apart from provisions embodied in constitutions or in specific statutes expressly providing for reservation, it is recognized that it is the right of the Government of each Dominion to advise the Crown in all matters relating to its own affairs. Consequently, it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in Great Britain in any matter appertaining to the affairs of a Dominion against the views of the Government of that Dominion.

The appropriate procedure with regard to projected legislation in one of the self-governing parts of the Empire which may affect the interests of other self-governing parts is previous consultation between His Majesty's Ministers in the several parts concerned.

On the question raised with regard to the legislative competence of members of the British Commonwealth of Nations other than Great Britain, and in particular to the desirability of those members being enabled to legislate with extra-territorial effect, we think that it should similarly be placed on record that the constitutional practice is that legislation by the Parliament at Westminster applying to a Dominion would only be passed with the consent of the Dominion concerned.

As already indicated, however, we are of opinion that there are points arising out of these considerations, and in the application of these general principles, which will require detailed examination, and we accordingly recommend that steps should be taken by Great Britain and the Dominions to set up

a Committee with terms of reference on the following lines:

‘To inquire into, report upon, and make recommendations concerning—

- (i) Existing statutory provisions requiring reservation of Dominion legislation for the assent of His Majesty or authorizing the disallowance of such legislation.
- (ii) (a) The present position as to the competence of Dominion Parliaments to give their legislation extra-territorial operation.  
(b) The practicability and most convenient method of giving effect to the principle that each Dominion Parliament should have power to give extra-territorial operation to its legislation in all cases where such operation is ancillary to provision for the peace, order, and good government of the Dominion.
- (iii) The principles embodied in or underlying the Colonial Laws Validity Act, 1865, and the extent to which any provisions of that Act ought to be repealed, amended, or modified in the light of the existing relations between the various members of the British Commonwealth of Nations as described in this Report.’

*(d) Merchant Shipping Legislation.*

Somewhat similar considerations to those set out above governed our attitude towards a similar, though a special, question raised in relation to Merchant Shipping Legislation. On this subject it was pointed out that, while uniformity of administrative practice was desirable, and indeed essential, as regards the Merchant Shipping Legislation of the various parts of the Empire, it was difficult to reconcile the application, in their present form, of certain provisions of the principal Statute relating to Merchant Shipping, viz., the Merchant Shipping

Act of 1894, more particularly Clauses 735 and 736, with the constitutional status of the several members of the British Commonwealth of Nations.

In this case also we felt that, although, in the evolution of the British Empire, certain inequalities had been allowed to remain as regards various questions of maritime affairs, it was essential in dealing with these inequalities to consider the practical aspects of the matter. The difficulties in the way of introducing any immediate alterations in the Merchant Shipping Code (which dealt, amongst other matters, with the registration of British ships all over the world) were fully appreciated and it was felt to be necessary, in any review of the position, to take into account such matters of general concern as the qualifications for registry as a British ship, the status of British ships in war, the work done by His Majesty's Consuls in the interest of British shipping and seamen, and the question of Naval Courts at foreign ports to deal with crimes and offences on British ships abroad.

We came finally to the conclusion that, following a precedent which had been found useful on previous occasions,<sup>1</sup> the general question of Merchant Shipping Legislation had best be remitted to a special Sub-Conference, which could meet most appropriately at the same time as the Expert Committee, to which reference is made above. We thought that this special Sub-Conference should be invited to advise on the following general lines:

'To consider and report on the principles which should govern, in the general interest, the practice and legislation relating to merchant shipping in the various parts of the Empire, having regard to the change in constitutional status and general relations which has occurred since existing laws were enacted.'

<sup>1</sup> Such a Conference met in 1907 before the Imperial Conference of that year.

We took note that the representatives of India particularly desired that India, in view of the importance of her shipping interests, should be given an opportunity of being represented at the proposed Sub-Conference. We felt that the full representation of India on an equal footing with Great Britain and the Dominions would not only be welcomed, but could very properly be given, due regard being had to the special constitutional position of India as explained in Section III of this Report [p. 163].

(e) *The Appeal to the Judicial Committee of the Privy Council.*

Another matter which we discussed, in which a general constitutional principle was raised, concerned the conditions governing appeals from judgments in the Dominions to the Judicial Committee of the Privy Council. From these discussions it became clear that it was no part of the policy of His Majesty's Government in Great Britain that questions affecting judicial appeals should be determined otherwise than in accordance with the wishes of the part of the Empire primarily affected. It was, however, generally recognized that, where changes in the existing system were proposed which, while primarily affecting one part, raised issues in which other parts were also concerned, such changes ought only to be carried out after consultation and discussion.

So far as the work of the Committee was concerned, this general understanding expressed all that was required. The question of some immediate change in the present conditions governing appeals from the Irish Free State was not pressed in relation to the present Conference, though it was made clear that the right was reserved to bring up the matter again at the next Imperial Conference for discussion in relation to the facts of this particular case.

#### IV. THE CHANGE IN THE ROYAL STYLE AND TITLES

1. *The Royal and Parliamentary Titles Act, 1927*  
(17 Geo. 5, c. 4), April 12, 1927

1. It shall be lawful for His Most Gracious Majesty, by His Royal Proclamation under the Great Seal of the Realm,<sup>1</sup> issued within six months after the passing of this Act, to make such alteration in the style and titles at present appertaining to the Crown as to His Majesty may seem fit.

2.—(1) Parliament shall hereafter be known as and styled the Parliament of the United Kingdom of Great Britain and Northern Ireland; and accordingly, the present Parliament shall be known as the Thirty-fourth Parliament of the United Kingdom of Great Britain and Northern Ireland, instead of the Thirty-fourth Parliament of the United Kingdom of Great Britain and Ireland.

(2) In every Act passed and public document issued after the passing of this Act the expression 'United Kingdom' shall, unless the context otherwise requires, mean Great Britain and Northern Ireland.

2. *The Proclamation altering the Royal Style and Titles, May 13, 1927*

BY THE KING

A PROCLAMATION

Whereas by the Royal and Parliamentary Titles Act, 1927, it is enacted that it shall be lawful for Us by Our Royal Proclamation under the Great Seal of the Realm issued within six months after the passing of the said Act to make such alteration in the style

<sup>1</sup> This style is found in the famous Statute 24 Hen. VIII, c. 12, which also declares the Imperial character of England: 'This realm of England is an Empire.' This is one sense of the term 'Imperial Parliament'. See also p. xlvii.

and titles at present appertaining to the Crown as to Us may seem fit:

And whereas Our present style and titles are, in the Latin tongue, 'Georgius V. Dei Gratia Britanniarum et terrarum transmarinarum quae in ditione<sup>1</sup> sunt Britannica Rex, Fidei Defensor, Indiae Imperator', and in the English tongue, 'George V. by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India':

And whereas We have received a recommendation from the representatives of Our Governments in Conference assembled that Our style and titles should be altered as in manner hereinafter appearing:

We have thought fit, and We do hereby appoint and declare, by and with the advice of Our Privy Council, that henceforth so far as conveniently may be, on all occasions and in all instruments wherein Our style and titles are used, the following alteration shall be made in the style and titles at present appertaining to the Crown, that is to say, in the Latin tongue, for the word 'Britanniarum' there shall be substituted the words 'Magnae Britanniae, Hiberniae', and in the English tongue, for the words 'the United Kingdom of Great Britain and Ireland and of' the words 'Great Britain, Ireland and'.

Given at Our Court at Buckingham Palace, this Thirteenth day of May, in the year of our Lord One thousand nine hundred and twenty-seven, and in the Eighteenth year of Our Reign.

God Save the King.

<sup>1</sup> The Latin implies a condition of subjection, quite alien to Dominion status, and ought to have been reconsidered in 1927.



V. THE REPORT OF THE CONFERENCE ON  
THE OPERATION OF DOMINION LEGISLA-  
TION AND MERCHANT SHIPPING LEGIS-  
LATION, 1929

1. *The Position of India*

14. THE Imperial Conference of 1926 recommended that arrangements should be made for the representation of India at the Sub-Conference on Merchant Shipping questions; but did not suggest that India should be represented on the proposed Committee. As a result, however, of preliminary examination of the matters falling within the scope of the terms of reference to the proposed Committee, it appeared that, while the position of India was a special one, some of the matters likely to come up for detailed discussion at the present Conference might be of interest to that country. It was consequently agreed that arrangements should be made for the representation of India at the present Conference for the discussion of the subject of merchant shipping and of such other particular subjects arising at the Conference as might be of direct interest to India.

2. *The Questions before the Conference*

15. In approaching the inquiry into the subjects referred to them, the present Conference have not considered it within the terms of their appointment to re-examine the principles upon which the relations of the members of the Commonwealth are now established. These principles of freedom, equality, and co-operation have slowly emerged from the experience of the self-governing communities now constituting that most remarkable and successful experiment in co-operation between free democracies which has ever been developed, the British Commonwealth of Nations; they have been tested

under the most trying conditions and have stood that test; they have been given authoritative expression by the Governments represented at the Imperial Conference of 1926; and have been accepted throughout the British Commonwealth. The present Conference have therefore considered their task to be merely that of endeavouring to apply the principles, laid down as directing their labours, to the special cases where law or practice is still inconsistent with those principles, and to report their recommendations as a preliminary to further consideration by His Majesty's Governments in the United Kingdom and in the Dominions.

16. The three heads of the terms of reference to the Conference, apart from the question of merchant shipping which is dealt with separately, may be classified briefly as dealing with:

- (i) Disallowance and Reservation;
- (ii) The extra-territorial operation of Dominion legislation;
- (iii) The Colonial Laws Validity Act, 1865.

17. It seems convenient to give some indication of the origin and nature of the questions which arise in each case, and then to state the recommendations of the Conference under each head.

### *3. The Disallowance and Reservation of Dominion Legislation*

#### *(a) Disallowance.*

18. The power of disallowance means the right of the Crown, which has hitherto been exercised (when occasion for its exercise has arisen) on the advice of Ministers in the United Kingdom, to annul an Act passed by a Dominion or Colonial Legislature.

19. The prerogative or statutory powers of His Majesty the King to disallow laws made by the Parliament of a Dominion, where such powers still subsist, have not been exercised for many years,

and it is desirable that the position with regard to disallowance should now be made clear.

20. Whatever the historical origin of the power of disallowance may have been, it has now found a statutory expression in most of the Dominion Constitutions, and accordingly the power of disallowance in reference to Dominion legislation exists and is regulated solely by the statutory provisions of those Constitutions.<sup>1</sup>

21. Section 58 of the New Zealand Constitution Act, 1852, and Section 56 of the British North America Act, 1867, empower the King in Council to disallow any Act of the Parliament of either Dominion within a period of two years from the receipt of the Act from the Governor-General. In Section 59 of the Constitution of the Commonwealth of Australia (1900) and Section 65 of the South Africa Act, 1909, the period prescribed is one year after the assent of the Governor-General has been given. The Irish Free State Constitution contains no provision for disallowance.

22. A distinction must, of course, be drawn between the existence of these provisions and their exercise. In the early stages of responsible government cases of disallowance occurred not infrequently merely for the reason that the legislation disallowed did not commend itself on its merits to the Government of the United Kingdom. This practice did not however long survive, for it was realized that under the conditions of self-government the power of disallowance should only be exercised where grave Imperial interests were concerned, and that such intervention was improper with regard to legislation of purely domestic concern. In fact the power of disallowance has not been exercised in relation to Canadian legislation since 1873 or to New Zealand

<sup>1</sup> In Newfoundland the Constitution is based on Letters Patent and not on Statute, and disallowance is provided for in the Letters Patent. See Keith, *Responsible Government in the Dominions* (1928), ii. 759, 760.

legislation since 1867; it has never been exercised in relation to legislation passed by the Parliaments of the Commonwealth of Australia or the Union of South Africa.

23. The Conference agree that the present constitutional position is that the power of disallowance can no longer be exercised in relation to Dominion legislation. Accordingly, those Dominions who possess the power to amend their Constitutions in this respect can, by following the prescribed procedure, abolish the legal power of disallowance if they so desire. In the case of those Dominions who do not possess this power, it would be in accordance with constitutional practice that, if so requested by the Dominion concerned, the Government of the United Kingdom should ask Parliament to pass the necessary legislation.

24. The special position in relation to the Colonial Stock Act, 1900, may conveniently be dealt with in this place. This Act empowers His Majesty's Treasury in the United Kingdom to make regulations governing the admission of Dominion stocks to the list of trustee securities in the United Kingdom. One of the conditions prescribed by the Treasury which at present govern the admission of such stocks is a requirement that the Dominion Government shall place on record a formal expression of its opinion that any Dominion legislation which appears to the Government of the United Kingdom to alter any of the provisions affecting the stock to the injury of the stockholder or to involve a departure from the original contract in regard to the stock would properly be disallowed. We desire to place on record our opinion that, notwithstanding what has been said in the preceding paragraph, where a Dominion Government has complied with this condition and there is any stock (of either existing or future issues of that Government) which is a trustee security in consequence of such compliance, the

right of disallowance in respect of such legislation must remain and can properly be exercised.<sup>1</sup> In this respect alone is there any exception to the position as declared in the preceding paragraph.

25. The general question of the terms on which loans raised by one part of the British Commonwealth should be given the privilege of admission to the Trustee List in another part falls naturally for determination by the Government of the latter, and it is for the other Governments to decide whether they will avail themselves of the privilege on the terms specified. It is right, however, to point out that the condition regarding disallowance makes it difficult and in one case [Irish Free State] impossible for certain Dominions to take advantage of the provisions of the Colonial Stock Act, 1900.

(b) *Reservation.*

26. Reservation means the withholding of assent by a Governor-General or Governor to a Bill duly passed by the competent Legislature in order that His Majesty's pleasure may be taken thereon.

27. Statutory provisions dealing with reservation of Bills passed by Dominion Parliaments may be divided into (1) those which confer on the Governor-General a discretionary power of reservation and (2) those which specifically oblige the Governor-General to reserve Bills dealing with particular subjects.

28. The discretionary power of reservation is dealt with in Sections 56 and 59 of the New Zealand Constitution Act, 1852, Sections 55 and 57 of the British North America Act, 1867, Sections 58 and 60 of the Constitution of the Commonwealth of Australia (1900), Sections 64 and 66 of the South Africa Act, 1909, and Article 41 of the Constitution of the Irish Free State.

29. Provisions requiring Bills relating to particular

<sup>1</sup> This principle is reiterated and homologated by the Prime Minister of Canada, House of Commons, June 30, 1931.

subjects to be reserved by the Governor-General for the signification of His Majesty's pleasure exist in the Australian, New Zealand, and South African Constitutions. By Section 65 of the New Zealand Constitution Act, 1852, the General Assembly of New Zealand is given power to alter the sums allocated by the Schedule to the Act for the Governor's salary, the Judges, the establishment of the general government, and native purposes respectively, but any Bill altering the salary of the Governor or the sum allocated to native purposes must be reserved. By Section 74 of the Constitution of the Commonwealth of Australia (1900) it is provided that the Commonwealth Parliament may make laws limiting the matters in which special leave to appeal from the High Court of Australia to His Majesty in Council may be asked, but proposed laws containing any such limitation shall be reserved by the Governor-General for the signification of His Majesty's pleasure. The South Africa Act, 1909, contains three sections relating to the reservation of Bills dealing with particular subjects. Section 106 contains provisions similar to those in Section 74 of the Constitution of the Commonwealth of Australia. Section 64 provides that all Bills repealing or amending that section or any of the provisions of Chapter IV of the Act under the heading 'House of Assembly' and all Bills abolishing provincial councils or abridging the powers conferred on them under Section 85 shall be reserved. By paragraph 25 of the Schedule to the Act, which lays down the terms and conditions on which the Governor in Council may undertake the government of native territories if transferred to the Union under Section 151, it is provided that all Bills to amend or alter the provisions of this Schedule shall be reserved. There is no provision requiring reservation in either the Canadian or Irish Free State Constitutions.

30. Provisions relating to compulsory reservation

are also to be found in the Colonial Courts of Admiralty Act, 1890, and in the Merchant Shipping Act, 1894. These provisions are dealt with in another section of this Report.

31. The power of reservation had its origin in the instructions given by the Crown to the Governor of a Colony as to the exercise by him of the power to assent to Bills passed by the colonial legislative body. It has been embodied in one form or another in the Constitutions of all the Dominions and may be regarded in their case as a statutory and not a prerogative power. Its exercise has involved the intervention of the Government of the United Kingdom at three stages—in the instructions to the Governor concerning the classes of Bills to be reserved, in the advice tendered to the Crown regarding the giving or withholding assent to Bills actually reserved, and in the forms in use for signifying the Royal pleasure upon a reserved Bill. Reservation found a place naturally enough in the older colonial system under which the Crown exercised supervision over the whole legislation and administration of a Colony through Ministers in the United Kingdom. In the earlier stages of self-government supervision over legislation did not at once disappear, but it was exercised in a constantly narrowing field with the development of the principles and practice of responsible government. As regards the Dominions, it gradually came to be realized that the attainment of the purposes of reservation must be sought in other ways than through the use of powers by the Government of the United Kingdom. The present constitutional position is set forth in the statement of principles governing the relations of the United Kingdom and the Dominions contained in the Report of the Imperial Conference of 1926; and we have to apply these principles to the power of reservation and its exercise in the conditions now established.

32. Applying the principles laid down in the Imperial Conference Report of 1926, it is established first that the power of discretionary reservation if exercised at all can only be exercised in accordance with the constitutional practice in the Dominion governing the exercise of the powers of the Governor-General; secondly, that His Majesty's Government in the United Kingdom will not advise His Majesty the King to give the Governor-General any instructions to reserve Bills presented to him for assent, and thirdly, as regards the signification of the King's pleasure concerning a reserved Bill, that it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in the United Kingdom against the views of the Government of the Dominion concerned.

33. In cases where there is a special provision requiring the reservation of Bills dealing with particular subjects, the position would in general fall within the scope of the doctrine that it is the right of the Government of each Dominion to advise the Crown in all matters relating to its own affairs and that consequently it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in the United Kingdom in any matter appertaining to the affairs of a Dominion against the views of the Government of that Dominion.

34. The same principle applies to cases where alterations of a Constitution are required to be reserved.

35. As regards the continued existence of the power of reservation, certain Dominions possess the power by amending their Constitutions to abolish the discretionary power and to repeal any provisions requiring reservation of Bills dealing with particular subjects, and it is, therefore, open to those Dominions to take the prescribed steps to that end if they so desire.



36. As regards Dominions that need the co-operation of the Parliament of the United Kingdom in order to amend the provisions in their Constitutions relating to reservation, we desire to place on record our opinion that it would be in accordance with constitutional practice that if so requested by the Dominion concerned the Government of the United Kingdom should ask Parliament to pass the necessary legislation.

4. *The Extra-territorial Operation of Dominion Legislation*

37. In the case of all Legislatures territorial limitations upon the operation of legislation are familiar in practice. They arise from the express terms of statutes or from rules of construction applied by the Courts as to the presumed intention of the Legislature, regard being had to the comity of nations and other considerations. But in the case of the legislation of Dominion Parliaments there is also an indefinite range in which the limitations may exist not merely as rules of interpretation but as constitutional limitations. So far as these constitutional limitations exist there is a radical difference between the position of Acts of the Parliament of the United Kingdom in the United Kingdom itself and Acts of a Dominion Parliament in the Dominion.

38. The subject is full of obscurity, and there is conflict in legal opinion as expressed in the Courts and in the writings of jurists both as to the existence of the limitation itself and as to its extent. There are differences in Dominion Constitutions themselves which are reflected in legal opinion in those Dominions. The doctrine of limitation is the subject of no certain test applicable to all cases, and constitutional power over the same matter may depend on whether the subject is one of a civil remedy or of criminal jurisdiction. The practical inconvenience of the doctrine is by no means to be measured by

the number of cases in which legislation has been held to be invalid or inoperative. It introduces a general uncertainty which can be illustrated by questions raised concerning fisheries, taxation, shipping, air navigation, marriage, criminal law, deportation, and the enforcement of laws against smuggling and unlawful immigration. The state of the law has compelled legislatures to resort to indirect methods of reaching conduct which, in virtue of the doctrine, might lie beyond their direct power but which they deem it essential to control as part of their self-government.

39. It would not seem to be possible in the present state of the authorities to come to definite conclusions regarding the competence of Dominion Parliaments to give their legislation extra-territorial operation; and, in any case, uncertainty as to the existence and extent of the doctrine renders it desirable that legislation should be passed by the Parliament of the United Kingdom making it clear that this constitutional limitation does not exist.<sup>1</sup>

40. We are agreed that the most suitable method of placing the matter beyond possibility of doubt would be by means of a declaratory enactment in the terms set out below passed, with the consent of all the Dominions, by the Parliament of the United Kingdom.

41. With regard to the extent of the power so to be declared, we are of opinion that the recognition of the powers of a Dominion to legislate with extra-territorial effect should not be limited either by reference to any particular class of persons (e.g. the citizens of the Dominion) or by any reference to laws 'ancillary to provision for the peace, order, and good government of the Dominion' (which is the phrase appearing in the terms of reference to the Conference).

<sup>1</sup> See Keith, *Responsible Government in the Dominions* (1928), p. 321-38.

42. We regard the first limitation as undesirable in principle. With respect to the second, we think that the introduction of a reference to legislation ancillary to peace, order, and good government is unnecessary, would add to the existing confusion on the matter, and might diminish the scope of the powers the existence of which it is desired to recognize.

43. After careful consideration of possible alternatives, we recommend that the clause should be in the following form:

'It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.'

44. In connexion with the exercise of extra-territorial legislative powers, we consider that provision should be made for the customary extra-territorial immunities with regard to internal discipline enjoyed by the armed forces of one Government when present in the territory of another Government with the consent of the latter. Such an arrangement would be of mutual advantage and common convenience to all parts of the Commonwealth, and we recommend that provision should be made by each member of the Commonwealth to give effect to such customary extra-territorial immunities within its territory as regards other members of the Commonwealth.

##### 5. *Colonial Laws Validity Act, 1865*

45. The circumstances in which the Colonial Laws Validity Act, 1865, came to be enacted are so well known that only a brief reference to them is necessary in this Report.

46. From an early stage in the history of Colonial development the theory had been held that there was a common law rule that legislation by a Colonial Legislature was void if repugnant to the law of

England. This rule was apparently based on the assumption that there were certain fundamental principles of English law which no Colonial law could violate, but the scope of these principles was by no means clearly defined.

47. A series of decisions, however, given by the Supreme Court of South Australia in the middle of the nineteenth century applied the rule so as to invalidate several of the Acts of the Legislature of that Colony. It was soon realized that, if this interpretation of the law were sound, responsible Government, then recently established by the release of the Australian Colonies from external political control, would to a great extent be rendered illusory by reason of legal limitations on the legislative power which were then for the first time seen to be far more extensive than had been supposed. The serious situation which thus developed in South Australia led to an examination of the whole question by the Law Officers of the Crown in England, whose opinion, while not affirming the extensive application of the doctrine of repugnancy upheld by the South Australian Court, found the test of repugnancy to be of so vague and general a kind as to leave great uncertainty in its application. They accordingly advised legislation to define the scope of the doctrine in new and precise terms. The Colonial Laws Validity Act, 1865, was enacted as the result of their advice.

48. The Act expressly conferred upon Colonial Legislatures the power of making laws even though repugnant to the English common law, but declared that a Colonial law repugnant to the provisions of an Act of the Parliament of the United Kingdom extending to the Colony either by express words or by necessary intendment should be void to the extent of such repugnancy. The Act also removed doubts which had arisen regarding the validity of laws assented to by the Governor of a Colony in a

manner inconsistent with the terms of his Instructions.

49. The Act, at the time when it was passed, without doubt extended the then existing powers of Colonial legislatures. This has always been recognized, but it is no less true that definite restrictions of a far-reaching character upon the effective exercise of those powers were maintained and given statutory effect. In important fields of legislation actually covered by statutes extending to the Dominions the restrictions upon legislative power have caused and continue to cause practical inconvenience by preventing the enactment of legislation adapted to their special needs. The restrictions in the past served a useful purpose in securing uniformity of law and co-operation on various matters of importance: but it follows from the Report of the Imperial Conference of 1926 that this method of securing uniformity, based as it was upon the supremacy of the Parliament of the United Kingdom, is no longer constitutionally appropriate in the case of the Dominions, and the next step is to bring the legal position into accord with the constitutional. Moreover, the interpretation of the Act has given rise to difficulties in practice, especially in Australia, because it is not always possible to be certain whether a particular Act does or does not extend by necessary intendment to a Dominion, and, if it does, whether all or any of the provisions of a particular Dominion law are or are not repugnant to it.

50. We have therefore proceeded on the basis that effect can only be given to the principles laid down in the Report of 1926 by repealing the Colonial Laws Validity Act, 1865, in its application to laws made by the Parliament of a Dominion, and the discussions at the Conference were mainly concerned with the manner in which this should be done. Our recommendation is that legislation be enacted

declaring in terms that the Act should no longer apply to the laws passed by any Dominion.

51. We think it necessary, however, that there should also be a substantive enactment declaring the powers of the Parliament of a Dominion, lest a simple repeal of the Colonial Laws Validity Act might be held to have restored the old common law doctrine.

52. It may be stated in this connexion that, having regard to the nature of the relations between the several members of the British Commonwealth and the constitutional position of the Governor-General of a Dominion, it has not been considered necessary to make any express provision for the possibility, contemplated in Section 4 of the Colonial Laws Validity Act, of colonial laws assented to by the Governor being held void because of any instructions with reference to such laws or the subjects thereof contained in the Letters Patent or Instrument authorizing the Governor to assent to laws for the peace, order, or good government of the Colony.

53. We recommend that effect be given to the proposals in the foregoing paragraphs, by means of clauses in the following form:

‘(1) The Colonial Laws Validity Act, 1865, shall cease to apply to any law made by the Parliament of a Dominion.

‘(2) No law and no provision of any law hereafter made by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England or to the provisions of any existing or future Act of Parliament or to any order, rule or regulation made thereunder, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule, or regulation in so far as the same is part of the law of the Dominion.’

54. With regard, lastly,<sup>1</sup> to the problem which arises from the existence of a legal power in the Parliament of the United Kingdom to legislate for the Dominions, we consider that the appropriate method of reconciling the existence of this power with the established constitutional position is to place on record a statement embodying the conventional usage. We therefore recommend that a statement in the following terms should be placed on record in the proceedings of the next Imperial Conference—

'It would be in accord with the established constitutional position of all members of the Commonwealth in relation to one another that no law hereafter made by the Parliament of the United Kingdom shall extend to any Dominion otherwise than at the request and with the consent of that Dominion.'

We further recommend that this constitutional convention itself should appear as a formal recital or preamble in the proposed Act of the Parliament of the United Kingdom.

55. Practical considerations affecting both the drafting of Bills and the interpretation of Statutes make it desirable that this principle should also be expressed in the enacting part of the Act, and we accordingly recommend that the proposed Act should contain a declaration and enactment in the following terms:

'Be it therefore declared and enacted that no Act of Parliament hereafter made shall extend or be deemed to extend to a Dominion unless it is expressly declared therein that that Dominion has requested and consented to the enactment thereof.'

<sup>1</sup> The Conference thus admits the inalienability of the sovereign power of the Imperial Parliament, a view stressed by the Prime Minister of Canada on June 30, 1931. Contrast the claim in the Free State Constitution, Art. 2. See above, pp. xxix, xxx.

56. The association of constitutional conventions with law has long been familiar in the history of the British Commonwealth; it has been characteristic of political development both in the domestic government of these communities and in their relations with each other; it has permeated both executive and legislative power. It has provided a means of harmonizing relations where a purely legal solution of practical problems was impossible, would have impaired free development, or would have failed to catch the spirit which gives life to institutions. Such conventions take their place among the constitutional principles and doctrines which are in practice regarded as binding and sacred whatever the powers of Parliaments may in theory be.

57. If the above recommendations are adopted, the acquisition by the Parliaments of the Dominions of full legislative powers will follow as a necessary consequence. We then proceeded to consider whether in these circumstances special provision ought to be made with regard to certain subjects. These seemed to us to fall into two categories, namely, those in which uniform or reciprocal action may be necessary or desirable for the purpose of facilitating free co-operation among the members of the British Commonwealth in matters of common concern, and those in which peculiar and in some cases temporary conditions in some of the Dominions call for special treatment.

58. By the removal of all such restrictions upon the legislative powers of the Parliaments of the Dominions and the consequent effective recognition of the equality of these Parliaments with the Parliament of the United Kingdom, the law will be brought into harmony with the root principle of equality governing the free association of the members of the British Commonwealth of Nations.

59. As, however, these freely associated members are united by a common allegiance to the Crown, it



is clear that the laws relating to the succession to the Throne and the Royal Style and Titles are matters of equal concern to all.

60. We think that appropriate recognition would be given to this position by means of a convention similar to that which has in recent years controlled the theoretically unfettered powers of the Parliament of the United Kingdom to legislate upon these matters. Such a constitutional convention would be in accord with and would not derogate from and is not intended in any way to derogate from the principles stated by the Imperial Conference of 1926 as underlying the position and mutual relations of the members of the British Commonwealth of Nations. We therefore recommend that this convention should be formally put on record in the following terms:

'In as much as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom.'

61. We recommend that the statement of principles set out in the three preceding paragraphs be placed on record in the proceedings of the next Imperial Conference, and that the constitutional convention itself in the form which we have suggested should appear as a formal recital or preamble in the proposed Act to be passed by the Parliament of the United Kingdom.

62. The second subject which we considered

concerns the effect of the acquisition of full legislative powers by the Parliaments of the Dominions possessing federal Constitutions.

63. Canada alone among the Dominions has at present no power to amend its Constitution Act without legislation by the Parliament of the United Kingdom. The fact that no specific provision was made for effecting desired amendments wholly by Canadian agencies is easily understood, apart from the special conditions existing in Canada at that time, when it is recalled that the British North America Act, 1867, was the first Dominion federation measure and was passed over sixty years ago, at an early stage of development. It was pointed out that the question of alternative methods of amendment was a matter for future consideration by the appropriate Canadian authorities and that it was desirable therefore to make it clear that the proposed Act of the Parliament of the United Kingdom would effect no change in this respect. It was also pointed out that for a similar reason an express declaration was desirable that nothing in the Act should authorize the Parliament of Canada to make laws on any matter at present within the authority of the Provinces, not being a matter within the authority of the Dominion.

64. The Commonwealth of Australia was established under, and its Constitution is contained in, an Act of Parliament of the United Kingdom, the Commonwealth of Australia Constitution Act, 1900. The authority of the Constitution, with its distribution of powers between Commonwealth and States, originated in the first instance from the supremacy of Imperial legislation; and it was pointed out that the continued authority of the Constitution is essential to the maintenance of the federal system. The Constitution of the Commonwealth, though paramount law for the Parliament of the Commonwealth, is subject to alteration by the joint action

of Parliament and the Electorate. To that extent the Commonwealth need not have recourse to any authority external to itself for alterations of its instrument of government. But 'the Constitution', though the main part, is not the whole of the Commonwealth of Australia Constitution Act; and the eight sections of that which precede the section containing 'the Constitution' can be altered only by an Act of the Parliament of the United Kingdom. It will be for the proper authorities in Australia in due course to consider whether they desire this position to remain and, if not, how they propose to provide for the matter.

65. The Constitution of New Zealand is to a very considerable extent alterable by the Parliament of New Zealand; but the powers of alteration conferred by the Constitution are subject to certain qualifications, and it is apparently a matter of doubt whether these qualifications have been removed by Section 5 of the Colonial Laws Validity Act. It appears to us that any recommendations in relation to the Constitution of the Dominion of Canada and the Commonwealth of Australia should also be applied to New Zealand; and it will then be for the appropriate authorities in New Zealand to consider whether, and, if so, in what form, the full power of alteration should be given.

66. We are accordingly of opinion that the inclusion is required in the proposed Act of the Parliament of the United Kingdom of express provisions dealing with the matters discussed in the three preceding paragraphs, and we have prepared the following clauses:

(1) Nothing in this Act shall be deemed to confer any power to repeal or alter the Constitution Acts of the Dominion of Canada, the Commonwealth of Australia, and the Dominion of New Zealand, otherwise than in accordance with the

law and constitutional usage and practice heretofore existing.

(2) Nothing in this Act shall be deemed to authorize the Parliaments of the Dominion of Canada and the Commonwealth of Australia to make laws on any matter at present within the authority of the Provinces of Canada or the States of Australia, as the case may be, not being a matter within the authority of the Parliaments or Governments of the Dominion of Canada and of the Commonwealth of Australia respectively.

67. Similar considerations do not arise in connexion with the Constitutions of the Union of South Africa and the Irish Free State. The Constitutions of both countries are framed on the unitary principle. Both include complete legal powers of constitutional amendment. In the case of the Union of South Africa the exercise of these powers is conditioned only by the provisions of Section 152 of the South Africa Act, 1909. In the case of the Irish Free State they are exercised in accordance with the obligations undertaken by the Articles of Agreement for a Treaty signed at London on the 6th day of December, 1921.

68. The Report of 1926 dealt only with the constitutional position of the Governments and Parliaments of the Dominions. In recommending the setting up of the present Conference it did not make any specific mention of the special problems presented by federal Constitutions, and accordingly the present Conference has not been called on to consider any matters relating to the legislative powers of the Provincial Legislatures in Canada or the State Legislatures in Australia.<sup>1</sup> The federal character of the Constitutions of Canada and Australia, however, gives rise to questions which we

<sup>1</sup> In 1931 the Parliaments of Western Australia and Tasmania formally protested against the passing of the Statute of Westminster, though it had been altered to meet objections on the motion of Mr. Latham in the Commonwealth Parliament; see vii (12), *post*.

have not found it possible to leave out of account, inasmuch as they concern self-government in those Dominions.

69. The Constitution of Australia presents a special problem in respect to extra-territorial legislative power. The most urgently required field of extra-territorial power is criminal law, which, in general, is within the State power in Australia. In Australia the Parliaments of the States are not subject to any specific territorial restrictions; they differ from the Commonwealth Parliament only in this, that their laws have not the extended operation specifically given to the laws of the Commonwealth Parliament by Section 5 of the Commonwealth of Australia Constitution Act, and that the Commonwealth Parliament has power over certain specific matters which look beyond the territory of the Commonwealth. The question whether the power of enacting extra-territorial laws over matters within its sphere, to be enjoyed by the Commonwealth Parliament in common with the Parliaments of other Dominions, should be granted also to State Parliaments is a matter primarily for consideration by the proper authorities in Australia.

70. The Australian Constitution also presents special problems in relation to disallowance and reservation. In Australia there is direct contact between the States and His Majesty's Government in the United Kingdom in respect of disallowance and reservation of State legislation. This position will not be affected by the report of the present Conference.

71. The question of the effect of repugnance of Provincial or State legislation to Acts of the Parliament of the United Kingdom presents the same problems in Canada and in Australia. The recommendations which we have made with regard to the Colonial Law Validity Act do not deal with the problems of Provincial or State legislation. In the

absence of special provision, Provincial and State legislation will continue to be subject to the Colonial Laws Validity Act and to the legislative supremacy of the Parliament of the United Kingdom, and it will be a matter for the proper authorities in Canada and in Australia to consider whether and to what extent it is desired that the principles to be embodied in the new Act of the Parliament of the United Kingdom should be applied to Provincial and State legislation in the future.

72. We pass now to the subject of nationality, which is clearly a matter of equal interest to all parts of the Commonwealth.

73. Nationality is a term with varying connotations. In one sense it is used to indicate a common consciousness based upon race, language, traditions, or other analogous ties and interests and is not necessarily limited to the geographic bounds of any particular State. Nationality in this sense has long existed in the older parent communities of the Commonwealth. In another and more technical sense it implies a definite connexion with a definite State and Government. The use of the term in the latter sense has in the case of the British Commonwealth been attended by some ambiguity, due in part to its use for the purpose of denoting also the concept of allegiance to the Sovereign. With the constitutional development of the communities now forming the British Commonwealth of Nations, the terms 'national', 'nationhood', and 'nationality', in connexion with each member, have come into common use.

74. The status of the Dominions in international relations, the fact that the King, on the advice of his several Governments, assumes obligations and acquires rights by treaty on behalf of individual members of the Commonwealth,<sup>1</sup> and the position

<sup>1</sup> See the Halibut Fishery Treaty, 1923-4, between Canada and the United States, Pt. V. i, *post*.

of the members of the Commonwealth in the League of Nations, and in relation to the Permanent Court of International Justice,<sup>1</sup> do not merely involve the recognition of these communities as distinct juristic entities, but also compel recognition of a particular status of membership of those communities for legal and political purposes. These exigencies have already become apparent; and two of the Dominions have passed Acts defining their 'nationals' both for national and for international purposes.

75. The members of the Commonwealth are united by a common allegiance to the Crown. This allegiance is the basis of the common status possessed by all subjects of His Majesty.

76. A common status directly recognized throughout the British Commonwealth in recent years has been given a statutory basis through the operation of the British Nationality and Status of Aliens Act, 1914.

77. Under the new position, if any change is made in the requirements established by the existing legislation, reciprocal action will be necessary to attain this same recognition, the importance of which is manifest in view of the desirability of facilitating freedom of intercourse and the mutual granting of privileges among the different parts of the Commonwealth.

78. It is of course plain that no member of the Commonwealth either could or would contemplate seeking to confer on any person a status to be operative throughout the Commonwealth save in pursuance of legislation based upon common agreement, and it is fully recognized that this common status is in no way inconsistent with the recognition within and without the Commonwealth of the distinct nationality possessed by the nationals of

<sup>1</sup> This gave rise to the first definition of Canadian nationals by Act of 1921 (c. 4). See Keith, *Responsible Government in the Dominions* (1928), ii. 888.

the individual states of the British Commonwealth.

79. But the practical working out and application of the above principles will not be an easy task nor is it one which we can attempt to enter upon in this report. We recommend, however, that steps should be taken as soon as possible by consultation among the various Governments to arrive at a settlement of the problems involved on the basis of these principles.

80. There are a number of subjects in which uniformity has hitherto been secured through the medium of Acts of the Parliament of the United Kingdom of general application. Where uniformity is desirable on the ground of common concern or practical convenience we think that this end should in the future be sought by means of concurrent or reciprocal action based upon agreement. We recommend that uniformity of the law of prize and co-ordination of prize jurisdiction should agreeably with the above principle be maintained. With regard to such subjects as fugitive offenders, foreign enlistment, and extradition in certain of its aspects, we recommend that before any alteration is made in the existing law there should be prior consultation and, so far as possible, agreement.

81. Our attention has been drawn to the definition of the word 'Colony' in Section 18 of the Interpretation Act, 1889, and we suggest that the opportunity should be taken of the proposed Act to be passed by the Parliament of the United Kingdom to amend this definition. We have accordingly prepared the following clause:

In this Act and in every Act passed after the commencement of this Act the expression 'Dominion' means the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and the



Irish Free State or any of them, and the expression 'Colony' shall, notwithstanding anything in the Interpretation Act, 1889, not include a Dominion or any Province or State forming part of a Dominion.

82. In making the recommendations contained in this part of our Report, we have proceeded on the assumption that the necessary legislation and the constitutional conventions to which we have referred will in due course receive the approval of the Parliaments of the Dominions concerned.

6. *Merchant Shipping Legislation and Colonial Courts of Admiralty Act, 1890*

(a) *Merchant Shipping Legislation.*

83. The general position is that the Dominions are empowered by their Constitutions to enact laws relating to merchant shipping subject to varying limitations. For instance, in the constitutions of Canada and Australia<sup>1</sup> 'Navigation and Shipping' is expressly mentioned as one of the matters in respect of which their Parliaments may legislate, but under legislation extending to the Dominions, or to the territories which now constitute the Dominions, which was enacted by the Parliament of the United Kingdom before 1911, and which is still the controlling legislation in respect of merchant shipping, the legislatures of the Dominions are treated as subordinate legislatures. The reason for this is not difficult to understand when it is explained that the Merchant Shipping Act, 1854, which was made for the situation existing at that date, is substantially the legislation which continues

<sup>1</sup> NOTE. In the case of Australia, this is qualified by the fact that 'navigation and shipping' is itself comprised within the matter of trade and commerce with other countries and among the States, so that intra-state shipping belongs not to the Commonwealth Parliament but to the States. The consequences arising from this division of power within Australia itself lie outside the consideration of this Conference.

to be applicable to the Dominions. The Merchant Shipping Act, 1894, which with its amendments is now the governing Act, was merely a re-enactment of the 1854 Act, with the insertion of amendments made during the intervening years. In the year 1854 none of the Dominions as such was in existence, and it is obvious that legislation cast in a form appropriate to the constitutional status of the British possessions over half a century ago must be inconsistent with the facts and constitutional relationships obtaining in the British Commonwealth of Nations as that system exists to-day.

84. Since the year 1911 the practice has been established that enactments of the Parliament of the United Kingdom in relation to merchant shipping and navigation have not been made applicable to the Dominions. In general, all shipping legislation passed by the Parliament of the United Kingdom since that date has been so framed as not to extend to the Dominions.

85. In view of the continued growth of the Dominions, it was inevitable that there should be doubts and difficulties as to the extent of the powers of the Dominions with respect to merchant shipping legislation, and this occasioned differences of opinion from time to time. The decisions of the courts, however, indicate in some of the Dominions that, because of the operation in those Dominions of the Colonial Laws Validity Act, 1865, the legal position is that statutes in respect of merchant shipping passed by the Parliament of the United Kingdom, both before and after the date of the respective constitutions, over-ride any repugnant legislation passed by a Dominion Parliament. In the Commonwealth of Australia the Act of the Parliament of the United Kingdom in relation to shipping has been construed by the High Court of Australia as intending to deal with the subject of merchant shipping as a single integer, subject only to specific

exceptions, so that repugnancy in legislation of the Parliament of the Commonwealth of Australia to that central and commanding intention is repugnancy to the Act of the Parliament of the United Kingdom.

*The New Position.*

91. Our general conclusions on the Operation of Dominion Legislation, including the recommendations regarding extra-territorial effect of Dominion laws, the Colonial Laws Validity Act, 1865, reservation and disallowance, are applicable to the constitutional position of legislation affecting merchant shipping.

92. When these conclusions are given effect to, and the restrictions imposed on Dominion Parliaments by Sections 735 and 736 of the Merchant Shipping Act, 1894, are removed by the Parliament of the United Kingdom, which we recommend should be done, there will not longer be any doubt as to the full and complete power of any Dominion Parliament to enact legislation in respect of merchant shipping, nor will Dominion laws be liable to be held inoperative on the ground of repugnancy to laws passed by the Parliament of the United Kingdom.

93. The new position will be that each Dominion will, amongst its other powers, have full and complete legislative authority over all ships while within its territorial waters or engaged in its coasting trade; and also over its own registered ships both intra-territorially and extra-territorially. Such extra-territorial legislation will, of course, operate subject to local laws while the ship is within another jurisdiction.

94. The ground is thus cleared for co-operation amongst the members of the British Commonwealth of Nations on an equal basis in those matters in which practical considerations call for concerted

action. This concerted action may take the form of agreements, for a term of years, as to the uniformity of laws throughout the British Commonwealth of Nations; as to the reciprocal aid in the enforcement of laws in jurisdictions within the British Commonwealth outside the territory of the enacting Parliament; and as to any limitations to be observed in the exercise of legislative powers.

*Recommendations.*

95. As shipping is a world-wide interest, in which uniformity is from the nature of the case desirable, there is a strong presumption in favour of concerted action between the members of the British Commonwealth in shipping matters, but this concerted action must from its nature result from voluntary agreements by the members of the Commonwealth; it should be confined to matters in which concerted action is necessary or desirable in the common interest; it should be sufficiently elastic to permit of alterations being made from time to time as experience is gained; and it must not prevent local matters being dealt with in accordance with local conditions. The kind of agreement which we have in mind in making our recommendations is one extending over a fixed period of years and providing for revision from time to time.

96. It would be difficult, and is not necessary, at the present stage to frame a complete list of the shipping questions on which uniformity is desirable, but certain matters stand out clearly and we submit . . . recommendations with regard to them.

(b) *Colonial Courts of Admiralty Act, 1890.*

110. At the present time, Admiralty Courts in all the Dominions, except in the Irish Free State, are constituted under the provisions of the Colonial Courts of Admiralty Act, 1890, passed by the Parliament of the United Kingdom. In the Irish Free State, Admiralty laws are administered under the

provisions of the Courts of Admiralty (Ireland) Act, 1867, and accordingly different considerations apply there.

111. Prior to the enactment of the Colonial Courts of Admiralty Act, 1890, Admiralty law was administered in the Dominions or in the territories now forming the Dominions, other than Ireland, in Vice-Admiralty Courts which were established in the early days under the authority of the Admiralty, and in later years under the authority of enactments passed by the Parliament of the United Kingdom. The Colonial Courts of Admiralty Act, 1890, which repealed all previous enactments in relation to Vice-Admiralty Courts, provided that every court of law in a British possession, which is for the time being declared in pursuance of that Act to be a Court of Admiralty, or which, if no such declaration is in force in the possession, has therein original unlimited civil jurisdiction, shall be a Court of Admiralty and that the jurisdiction of such Colonial Court of Admiralty should, subject to the provisions of the Act, be the same as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute, or otherwise. The Act also provided that any Colonial law 'shall not confer any jurisdiction which is not by this Act conferred upon a Colonial Court of Admiralty'. Apparently the intention was that the provisions of the Act should cover the whole field of Admiralty jurisdiction to the exclusion of any legislation by a Dominion. Rules for regulating the procedure and practice in the Court were authorized to be made by a Colonial Court of Admiralty, but such rules should not come into operation until approved by His Majesty in Council. Any Colonial law made in pursuance of the Act, which affects the jurisdiction of, or practice or procedure in the Courts, in respect of the jurisdiction conferred by the Act, must, unless previously approved by His Majesty through

a Secretary of State, either be reserved for the signification of His Majesty's pleasure thereon or contain a suspending clause providing that such law shall not come into operation until His Majesty's pleasure thereon has been publicly signified in the Dominion in which it is passed.

112. Under a recent decision of the Judicial Committee of the Privy Council, it was held that the jurisdiction of an Admiralty Court established under the Act does not march with the Admiralty jurisdiction of the High Court in England but was fixed by the Admiralty jurisdiction of the High Court as it existed when the Act was passed in 1890.

113. Since the year 1890, important additions have been made to the Admiralty jurisdiction of the High Court in England, and this jurisdiction has not been added to the Courts of Admiralty in the Dominions. The jurisdiction is, therefore, not uniform at the present time throughout the United Kingdom and the Dominions. Doubts have been expressed as to whether a Dominion, in which the Act is in force, has legislative authority to increase the jurisdiction of Admiralty Courts in such Dominion or whether this must be done by an Act of the Parliament of the United Kingdom.

114. The existing situation of control in the United Kingdom of Admiralty Courts in the Dominions is not in accord with the present constitutional status of the Dominions, and should be remedied.

115. Our recommendation is that each Dominion in which the Colonial Courts of Admiralty Act, 1890, is in force should have power to repeal that Act.

116. Our general conclusions on the operation of the Colonial Laws Validity Act, 1865, and reservation and disallowance are applicable to the Colonial Courts of Admiralty Act, 1890. As soon as the legislation necessary to give effect to these recom-

mendations is passed, each Dominion will be free to repeal, if and when desired, the Colonial Courts of Admiralty Act, 1890, in so far as that Act relates to that Dominion, and may then establish Admiralty Courts under its own laws.

117. We think it highly desirable to emphasize that so far as is possible there should be uniform jurisdiction and procedure in all Admiralty Courts in the British Commonwealth of Nations subject, of course, to such variations as may be required in matters of purely local or domestic interest.

118. His Majesty's Government in the United Kingdom have recently signed the International Conventions with regard to mortgages and liens and limitation of liability which were prepared at Brussels, and in this connexion we would point out that the following Resolution was passed by the Imperial Conference of 1926:

The Imperial Conference notes with satisfaction that progress which has been made towards the unification of maritime law in regard to the limitation of shipowners' liability and to maritime mortgages and liens by the preparation at Brussels of draft International Conventions on these subjects, and, having regard particularly to the advantages to be derived from uniformity, commends these Conventions to the consideration of the Governments of the various parts of the Empire.

119. To enable these Conventions to be ratified considerable changes will be necessary in the existing law in the United Kingdom with regard to Admiralty matters. We think it desirable that all Dominions should consider the changes proposed by the Conventions, and, if the Dominions or any of them adopt them, the opportunity might be taken, having regard to the fact that the new legislation will be necessary, of endeavouring to come to some agreement that uniformity should exist upon all matters of Admiralty jurisdiction and procedure, and for this purpose it would seem that the law of

the United Kingdom might form a useful basis for such an agreement.

(c) *Recommendations as to legislation to be enacted by the Parliament of the United Kingdom with respect to Sections 735 and 736 of the Merchant Shipping Act, 1894, and the Colonial Courts of Admiralty Act, 1890.*

120. The clauses which we have recommended to be enacted by the Parliament of the United Kingdom with relation to the extra-territorial operation of Dominion legislation and the Colonial Laws Validity Act, 1865, are intended to be applicable to Merchant Shipping legislation and the Colonial Courts of Admiralty Act, 1890, as well as to other legislation of the Parliament of the United Kingdom.

121. The Merchant Shipping Act, 1894, by Section 735, now confers upon the Parliament of a Dominion a limited power of repeal. The power of repeal with regard to Merchant Shipping Acts under the new position will, however, be covered by the wider power of repeal contained in the general clause which we have recommended.

122. Moreover, Sections 735 and 736 of the Merchant Shipping Act, 1894, and Sections 4 and 7 of the Colonial Courts of Admiralty Act, 1890, contain provisions for reservation which should no longer be applicable to legislation passed by a Dominion Parliament.

123. In order to make the above position clear and to remove any doubts which may exist, we recommend that a clause in the following terms should be inserted after the above-mentioned general clauses in the Act to be passed by the Parliament of the United Kingdom:

‘Without prejudice to the generality of the foregoing provisions of this Act—

‘(1) Sections seven hundred and thirty-five and seven hundred and thirty-six of the Mer-



chant Shipping Act, 1894, shall be construed as though reference therein to the Legislature of a British possession did not include reference to the Parliament of a Dominion.

'(2) Section four of the Colonial Courts of Admiralty Act, 1890 (which requires certain laws to be reserved for the signification of His Majesty's pleasure or to contain a suspending clause), and so much of Section seven of that Act as requires the approval of His Majesty in Council to any rules of Court for regulating the practice and procedure of a Colonial Court of Admiralty, shall cease to have effect in any Dominion as from the commencement of this Act.'

(d) *India.*

124. Subject to certain special provisions of the Merchant Shipping Acts, the legislative powers of the Indian Legislature are governed by the Government of India Act, and general statements regarding the position of the Dominions in matters of merchant shipping and Admiralty Court legislation may therefore not be entirely applicable in the case of India. At the same time, as the position of India in these matters has always been to all intents and purposes identical with that of the Dominions, it is not anticipated that there would be any serious difficulty in applying the principles of our recommendations to India, and we suggest that the question of the proper method of so doing should be considered by His Majesty's Government in the United Kingdom and the Government of India.

## VI. IMPERIAL CONFERENCE, 1930

### 1. *Introductory Speeches, October 1, 1930*

MR. RAMSAY MACDONALD: It is now our task to consider, upon the basis of our experience, how to give practical effect to the declarations of 1926. In order to prepare for our work, the existing legal structure of the Commonwealth had to be examined to see what modifications and adaptations are required to bring it into accord with these declarations. This has been done with the care and thoroughness which we expect from such distinguished legal minds as composed the Conference on the Operation of Dominion Legislation which met in London last autumn. We shall have to examine the report of that Conference and consider what is to be done with its recommendations. Whilst engaged in that work we shall not forget that behind it is the thought of building for the future. Whatever changes of form we may accept, we shall be guided by the truth that, though form is undoubtedly important, it is not the form but the spirit behind the form which matters.

In the sphere of foreign affairs the great objective is to secure and maintain world peace and uphold the influence of our Commonwealth of Nations in world affairs. Since 1926 I think we may point to three great steps which we have taken together to this end. First, the signature of the Paris Peace Pact has recorded the solemn assent of the chief countries of the world to the principle that war shall no longer be used as an instrument of national policy, and that the settlement of disputes shall only be sought by pacific means. We have since co-operated in taking a long step towards the establishment of arbitration as the proper means of settling disputes, by signing the Optional Clause.

Further, in the pursuit of limitation of armaments as a method of preventing war, we have this year joined in signing the London Naval Treaty. But there is much still to be done in both fields, by broadening the scope of arbitration agreements, and by securing a fuller and more general limitation of armaments. Let us be quite frank on this matter. The strength of armaments in the world to-day and the general unwillingness of Governments to advance the cause of a secured peace by a reduction of military material, unless checked, must soon lead to a new race in armaments to which the most pacific of nations cannot be indifferent. The outlook is disquieting, but should that calamity happen, it will not be the fault of our Commonwealth, which, both by precept and example, has shown the sincerity of its devotion to peace. I am sure that in our discussions we shall be able to find common ground for acting in harmony in the pursuit of these aims. One thing is clear. The members of the Commonwealth, acting simultaneously and together, can exercise an influence greatly exceeding any that can be employed by one member or series of members acting individually.

I turn now to Economic questions. The whole world is suffering from an acute depression of trade, in which we also have the inevitable misfortune to share. The characteristic features and causes of that depression may not be discussed at this stage, but I may say that, in my opinion, they raise issues of fundamental importance. They are partly the harvest of the War and the peace, still being reaped. They also mark changes akin to those which both caused and proceeded from the so-called Industrial Revolution of the end of the eighteenth and beginning of the nineteenth centuries. In any event, the problem is one which cannot be solved by one country alone. As civilization has progressed, it has become more and more clear how the prosperity (or

the reverse) of one country is closely linked up with the circumstances of others. What we have to consider at this Conference is, I suggest, what practical measures we can devise for helping one another, and thereby helping us all, remembering the different world contacts and internal industrial circumstances to which we have to accommodate ourselves. Two essentials are required for our economic co-operation. First, there is the will to succeed and the confidence that we shall succeed. No one who surveys our opportunities and resources can fail to have that confidence, in spite of the pernicious propaganda of defeatism which has been so prevalent in recent months. Secondly, we require practical measures of far-reaching soundness and not shortsighted attractions with unknown reactions. I hope our discussions at the Conference will provide the former.

MR. SCULLIN: One of the principal tasks ahead of us at this Imperial Conference of 1930 is to advance a stage further the great task of harmonizing the real self-determination of the Dominions with the real unity of the British Commonwealth of Nations.

The increasing volume of public discussion on the question of our Imperial relations would seem to indicate that positions of great difficulty and friction have arisen in recent years. I submit that this is not so. The machinery of our relations within the British Commonwealth is in course of evolving from its simple pre-War form towards something more appropriate to our present-day position.

In order to keep pace with the logical evolution of Imperial relations, it has become necessary for the old forms and technical limitations on our Dominion sovereignty to be abolished—and some part of our time at this Conference must be devoted to such considerations.

We hold that it is quite possible to reconcile complete and effective autonomy of the Dominions

with the unity of the British Commonwealth as a whole—but not if we attempt to dot every 'i' and cross every 't'. We are a free association of peoples—and to my mind there is nothing to be gained and perhaps a great deal to be lost, by attempting to crystallize our relations too closely within the confines of any formal document.

Here in this British Commonwealth of Nations we have in existence the nucleus of international co-operation on a fine scale. Let us strive to safeguard the unity of the whole without sacrificing the individual liberty of the parts. On the unity of the British Commonwealth may, depend, in time of crisis, the preservation of international peace.

MR. FORBES: New Zealand has not, in any great measure, been concerned with the recent developments in the constitutional relations between the members of the British Commonwealth of Nations. We have felt that at all times within recent years we have had ample scope for our national aspirations and ample freedom to carry out in their entirety such measures as have seemed to us to be desirable. We have valued and still value our close connexion with the United Kingdom and with our sister Dominions and we should have been well content to allow constitutional relationships to settle themselves in the time-honoured way, in accordance with the necessities of the position and the requirements of the time. We readily recognize, however, that the considerations applicable to one Dominion are not necessarily applicable to all, and that if our association together in one Commonwealth is to endure it must rest upon a basis which is acceptable to all. At this Conference it may be hoped that all question as to the status of the respective members of the Commonwealth will be finally disposed of, but with the elimination of this question arises another problem which in our view is of even higher importance.

It seems to us that in a Commonwealth consisting of at least six equal partners, differing in a marked degree in history, in geographical situation, in internal organization, in industrial development and in economic orientation, and differing to some extent also in language and in race, centrifugal influences must inevitably tend towards the weakening of our association in the absence of some effective means of evolving a common policy and common action in all essential matters. This is, in our opinion, the outstanding problem of the moment, and at this Conference it will be towards such a common understanding and a common policy based on adequate information and consultation that our efforts will be mainly directed. It is our hope that the Governments represented here will find it possible to divert their attention from status to co-operation.

GENERAL HERTZOG: In 1926 the Conference busied itself mainly with inter-Commonwealth State relations, i.e. with abstract principles as to status and competency. It will be the task of this Conference, if I am not mistaken, to apply itself more particularly to the solution of questions of an economic and fiscal nature; and in doing so let us hope that we shall attain a success not less than that achieved in 1926.

I am of course fully conscious of the very important functions devolving upon us at this Conference finally to adjust the outstanding constitutional questions consequent upon the decisions arrived at in 1926. The essentials of this task have, however, been settled for us so exhaustively by the report of the inter-Commonwealth Conference of last year that this portion of our labour may well be looked upon as already completed, except for the purpose of formal sanction, or the consideration of some matters of detail.

In considering questions touching economic

policy, it must be appreciated that inter-Commonwealth trade relations have to a certain extent been established and extended in the past on the basis of a system of voluntary reciprocal tariff preferences.

South Africa has, therefore, viewed with some concern the prospective abolition of existing tariff benefits on the part of the Government of Great Britain as was disclosed in a Government declaration some time ago. I wish, however, to make it quite clear that I look upon the fiscal policy of a country as in essence so closely associated with the economic life and well-being of its people, that only the particular circumstances and requirements of the State and people concerned can claim a voice in deciding upon it.

The position of Great Britain as the great Commonwealth market for Dominion products must necessarily, in the event of her deciding upon a change in her existing policy detrimental to the interests of the Dominions, exercise a determining influence upon their policy. It is, therefore, quite clear that the course eventually to be pursued by the Dominions must in the main depend upon the manner and extent to which their interests are going to be affected by the policy adopted by Great Britain.

South Africa would welcome an examination of the possibility of extending existing economic and trade relations by the adoption of inter-Commonwealth trade agreements providing for the extension of reciprocal tariff benefits on a fair and reasonable basis, and for periods sufficiently lengthy to create confidence and stability.

In no case, do I hope, will the Conference despair of arriving at a solution which will prevent the evil effects of a change of policy from assuming the character of a disaster to those who, believing in the stability of inter-Commonwealth economic relations, have been induced in good faith to make

investments on the basis of that belief. I can conceive of nothing more destructive of Commonwealth co-operation than such a failure, with the consequential loss of faith in the stability of our economic relations.

However, while the intensity of its economic and industrial problems is forcing upon the world, and, therefore, also upon us, a reconsideration of the very bases of our economic and industrial life, I have, Prime Minister, no doubt that the spirit in which we shall approach the great task before us will be such as to enable us to solve our difficulties in a manner consistent with the highest interests of the Commonwealth.

2. *The Report of the Committee on Inter-Imperial Relations*

(a) *The Operation of Dominion Legislation.*

The Imperial Conference examined the various questions arising with regard to the Report of the Conference on the Operation of Dominion Legislation and in particular took into consideration the difficulties which were explained by the Prime Minister of Canada regarding the representations which had been received by him from the Canadian Provinces in relation to that Report.

A special question arose in respect to the application to Canada of the sections of the Statute proposed to be passed by the Parliament at Westminster (which it was thought might conveniently be called the Statute of Westminster), relating to the Colonial Laws Validity Act and other matters. On the one hand it appeared that approval had been given to the Report of the Conference on the Operation of Dominion Legislation by resolution of the House of Commons of Canada, and accordingly, that the Canadian representatives felt themselves bound not to take any action which might properly be construed as a departure from the



spirit of that resolution. On the other hand, it appeared that representations had been received from certain of the Provinces of Canada subsequent to the passing of the resolution, protesting against action on the Report until an opportunity had been given to the Provinces to determine whether their rights would be adversely affected by such action.

Accordingly, it appeared necessary to provide for two things. In the first place it was necessary to provide an opportunity for His Majesty's Government in Canada to take such action as might be appropriate to enable the Provinces to present their views. In the second place it was necessary to provide for the extension of the sections of the proposed Statute to Canada or for the exclusion of Canada from their operation after the Provinces had been consulted. To this end it seemed desirable to place on record the view that the sections of the Statute relating to the Colonial Laws Validity Act should be so drafted as not to extend to Canada unless the Statute was enacted in response to such requests as are appropriate to an amendment of the British North America Act. It also seemed desirable to place on record the view that the sections should not subsequently be extended to Canada except by an Act of the Parliament of the United Kingdom enacted in response to such requests as are appropriate to an amendment of the British North America Act.

The Conference on the Operation of Dominion Legislation in 1929, recommended a draft clause for inclusion in the Statute proposed to be passed by the Parliament at Westminster to the following effect:

'No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion unless it is expressly declared in that Act that

that Dominion has requested, and consented to, the enactment thereof.'

At the present Conference the delegates of His Majesty's Government in the United Kingdom were apprehensive lest a clause in this form should have the effect of preventing an Act of the United Kingdom Parliament passed hereafter from having the operation which the legislation of one State normally has in relation to the territory of another. To obviate this, the following amendment was proposed:

'No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion *as part of the law in force in that Dominion*, unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof.'

The delegates from some of the Dominions were apprehensive lest the acceptance of the above amendment might imply the recognition of a right of the Parliament of the United Kingdom to legislate in relation to a Dominion (otherwise than at the request and with the consent of the Dominion) in a manner which, if the legislation had been enacted in relation to a foreign state, would be inconsistent with the principles of international comity. It was agreed that the clause as amended did not imply, and was not to be construed as implying, the recognition of any such right, and, on the proposal of the United Kingdom delegates, that a statement to this effect should be placed on record.

The Conference passed the following Resolutions:

(i) The Conference approves the Report of the Conference on the Operation of Dominion Legislation<sup>1</sup> (which is to be regarded as forming part of the Report of the present Conference), subject to the conclusions embodied in this section.

<sup>1</sup> Cmd. 3479.

(ii) The Conference recommends:

(a) that the Statute proposed to be passed by the Parliament at Westminster should contain the provisions set out in the schedule annexed.

(b) that the 1st December, 1931, should be the date as from which the proposed Statute should become operative.

(c) that with a view to the realization of this arrangement, Resolutions passed by both Houses of the Dominion Parliaments<sup>1</sup> should be forwarded to the United Kingdom, if possible by 1st July, 1931, and, in any case, not later than the 1st August, 1931, with a view to the enactment by the Parliament of the United Kingdom of legislation on the lines set out in the schedule annexed.

(d) that the Statute should contain such further provisions as to its application to any particular Dominion as are requested by that Dominion.

(b) *Nationality.*

The conclusions of the Conference were as follows:

(1) That the Conference affirms paragraphs 73 to 78 inclusive of the Report of the Conference on the Operation of Dominion Legislation.

(2) That, if any changes are desired in the existing requirements for the common status, provision should be made for the maintenance of the common status, and the changes should only be introduced (in accordance with present practice) after consultation and agreement among the several members of the Commonwealth.

(3) That it is for each member of the Commonwealth to define for itself its own nationals, but that, so far as possible, those nationals should be persons possessing the common status, though it

<sup>1</sup> The Resolutions were all duly passed, but Mr. Latham in the Commonwealth House of Representatives criticized the procedure, July 17, 1931.

is recognized that local conditions or other special circumstances may from time to time necessitate divergences from this general principle.

(4) That the possession of the common status in virtue of the law for the time being in force in any part of the Commonwealth should carry with it the recognition of that status by the law of every other part of the Commonwealth.

(c) *The Nationality of Married Women.*

Careful consideration was given to the subject of the nationality of married women. All the members of the Commonwealth represented at The Hague Conference of 1930<sup>\*</sup> signed the Nationality Convention there concluded, and will, it is assumed, introduce such legislation as may be necessary to give effect to Articles 8-10 of that Convention.<sup>1</sup> The Conference was satisfied, however, that any proposals for the further modification of the principle of the existing law would fail to secure unanimous agreement. It followed that the Conference was unable to make any recommendation for the substantive amendment of the law on this subject except to the extent stated above.<sup>2</sup>

(d) *Commonwealth Tribunal.*

The Report of the Conference on the Operation

The text of these Articles is as follows:

*Article 8.*

If the national law of the wife causes her to lose her nationality on marriage with a foreigner, this consequence shall be conditional on her acquiring the nationality of the husband.

*Article 9.*

If the national law of the wife causes her to lose her nationality upon a change in the nationality of her husband occurring during marriage, this consequence shall be conditional on her acquiring her husband's new nationality.

*Article 10.*

Naturalization of the husband during marriage shall not involve a change in the nationality of the wife except with her consent.

<sup>\*</sup> For the present law see Dicey and Keith, *Conflict of Laws* (ed. 5), pp. 161, 173, 174, 181, 182.

of Dominion Legislation contains the following paragraph (paragraph 125):

We felt that our work would not be complete unless we gave some consideration to the question of the establishment of a tribunal as a means of determining differences and disputes between members of the British Commonwealth. We were impressed with the advantages which might accrue from the establishment of such a tribunal. It was clearly impossible in the time at our disposal to do more than collate various suggestions with regard first to the constitution of such a tribunal, and secondly, to the jurisdiction which it might exercise. With regard to the former, the prevailing view was that any such tribunal should take the form of an *ad hoc* body selected from standing panels nominated by the several members of the British Commonwealth. With regard to the latter, there was general agreement that the jurisdiction should be limited to justiciable issues arising between governments. We recommend that the whole subject should be further examined by all the governments.

This matter was examined by the Conference, and they found themselves able to make certain definite recommendations with regard to it.

Some machinery for the solution of disputes which may arise between the members of the British Commonwealth is desirable. Different methods for providing this machinery were explored, and it was agreed, in order to avoid too much rigidity, not to recommend the constitution of a permanent court, but to seek a solution along the line of *ad hoc* arbitration proceedings. The Conference thought that this method might be more fruitful than any other in securing the confidence of the Commonwealth.

The next question considered was whether arbitration proceedings should be voluntary or obligatory, in the sense that one party would be under an obligation to submit thereto if the other party wished it. In the absence of general consent to an

obligatory system<sup>1</sup> it was decided to recommend the adoption of a voluntary system.

It was agreed that it was advisable to go further, and to make recommendations as to the competence and the composition of an arbitral tribunal, in order to facilitate resort to it, by providing for the machinery whereby a tribunal could, in any given case, be brought into existence.

As to the competence of the tribunal, no doubt was entertained that this should be limited to differences between governments. The Conference was also of opinion that the differences should only be such as are justiciable.

As to the composition of the tribunal it was agreed:

(1) The tribunal shall be constituted *ad hoc* in the case of each dispute to be settled.

(2) There shall be five members, one being the chairman; neither the chairman nor the members of the tribunal shall be drawn from outside the British Commonwealth of Nations.

(3) The members, other than the chairman, shall be selected as follows:

(a) One by each party to the dispute from States members of the Commonwealth other than the parties to the dispute, being persons who hold or have held high judicial office or are distinguished jurists and whose names will carry weight throughout the Commonwealth.

(b) One by each party to the dispute from any part of the Commonwealth, with complete freedom of choice.

(4) The members so chosen by each party shall select another person as chairman of the tribunal as to whom they shall have complete freedom of choice.

<sup>1</sup> Contrast the Dominion acceptance of compulsory jurisdiction under the Optional Clause of the Permanent Court of International Justice, Pt. V. xi, *post*.

(5) If the parties to the dispute so desire, the tribunal shall be assisted by the admission as assessors of persons with special knowledge and experience in regard to the case to be brought before the tribunal.

It was thought that the expenses of the tribunal itself in any given case should be borne equally by the parties, but that each party should bear the expense of presenting its own case.

It was felt that details as to which agreement might be necessary might be left for arrangement by the governments concerned.

(e) *Merchant Shipping.*

The Report of the Conference of 1929 dealt at considerable length (paragraphs 83 to 109) with merchant shipping legislation, and the following paragraphs of that Report should be referred to here.<sup>1</sup>

Then followed a statement of the outstanding points on which uniformity was desirable.

A draft of an agreement covering these points was this year prepared in the United Kingdom and circulated to the Dominions. The Conference examined this draft agreement very closely and came to the conclusion that, with certain alterations, it meets fully and satisfactorily the objects which Part VI of the 1929 Report had in view. The draft agreement as altered is shown in the Annex to Section VI.

The draft contains, in the form of an agreement which is flexible but as precise as the subject-matter will allow, a statement of the matters in which, after examination in two successive years by representatives of the Governments concerned, it is considered that concerted action on a voluntary basis between the parts of the Commonwealth is essential in the common interest, together with the broad principles

<sup>1</sup> See paragraphs 93-5, cited pp. 199-200, *ante*.

which should be followed in dealing with those matters. The Conference recommended that the agreement be made.

The agreement presupposes that the legislation contemplated by the 1929 Report has been passed, and that it should come into operation at the same time as that legislation.

It was pointed out that Clause 9 of the draft agreement did not make satisfactory provision for ships whose owners had their principal place of business in one part of the Commonwealth, and traded the ships regularly to and from that part, but, in order to avoid the conditions imposed by the laws of that part, registered the vessels in another part of the Commonwealth to which they did not trade. The Conference agreed that the point was one which required careful consideration. The agreement as originally drafted will enable all safety regulations to be applied to such ships and to some extent the provisions as to ships' articles also. A further clause has been inserted meeting the situation as regards discipline, but it was thought that it would be unwise to attempt to make further alterations in the draft agreement.

Canada reserves the right when signing the agreement to declare the extent, if any, to which the provisions of the agreement, other than those of Part I, shall not apply to ships navigating the Great Lakes of North America.

(f) *Defence Questions.*

(i) *Discipline of the Armed Forces.* In the very short time at the disposal of the Conference, it was impossible to do more than examine some aspects of the practical problems which will be involved in the carrying out of the recommendations contained in paragraph 44 of the Report of the Conference on the Operation of Dominion Legislation.<sup>1</sup>

<sup>1</sup> Agreement on this head was reached with South Africa in 1931 and the adherence of other Dominions invited. See above, p. 183.



It is assumed that all Governments will desire to take such action as may be necessary to secure (1) that the military discipline of any of the armed forces of the Commonwealth when present, by consent, within territory of another, rests upon a statutory basis, and (2) that there shall be no period of time during which the legal basis of military discipline could on any ground be impeached.

The method by which the above two objects can best be attained must necessarily be a matter for the Governments themselves.

As the action to be taken to give effect to the recommendations contained in paragraph 44 of the Report of the Conference on the Operation of Dominion Legislation is likely to take some time, it was agreed that all the Governments concerned will take such steps as may be necessary to provide against possible difficulties during that period.

(ii) *Prize Law and Procedure.* In the time at the disposal of the Conference it was impossible to examine any questions relating to Prize Law and Procedure, a subject which was mentioned in paragraph 80 of the 1929 Report. This matter, though one of paramount importance in certain contingencies, may happily be regarded as not being of any urgency at the present time. Accordingly, the Conference recommended that it should be the subject of further consideration by the Governments at their leisure, and that in the meantime, pending such consideration, it should be agreed that the *status quo* will be preserved.

(g) *The Appointment of Governors-General.*

Having considered the question of the procedure to be observed in the appointment of a Governor-General of a Dominion in the light of the alteration in his position resulting from the Resolution of the Imperial Conference of 1926, the Conference came to the conclusion that the following statements in

regard thereto would seem to flow naturally from the new position of the Governor-General as representative of His Majesty only.

1. The parties interested in the appointment of a Governor-General of a Dominion are His Majesty the King, whose representative he is, and the Dominion concerned.

2. The constitutional practice that His Majesty acts on the advice of responsible ministers applies also in this instance.

3. The ministers who tender and are responsible for such advice are His Majesty's ministers in the Dominion concerned.

4. The ministers concerned tender their formal advice after informal consultations with His Majesty.

5. The channel of communication between His Majesty and the Government of any Dominion is a matter solely concerning His Majesty and such Government. His Majesty's Government in the United Kingdom have expressed their willingness to continue to act in relation to any of His Majesty's Governments in any manner in which that Government may desire.<sup>1</sup>

8. The manner in which the instrument containing the Governor-General's appointment should reflect the principles set forth above is a matter in regard to which His Majesty is advised by his ministers in the Dominion concerned.

(h) *Draft<sup>2</sup> Agreement as to British Commonwealth Merchant Shipping* [Dec. 10, 1931].

His Majesty's Governments in the United Kingdom of Great Britain and Northern Ireland, Canada,

<sup>1</sup> Sir Isaac Isaacs' warrant as Governor-General of the Commonwealth was signed by the King, countersigned by the Commonwealth Prime Minister, and sealed with the Signet, whose use was authorized by the Secretary of State for the Dominions. The validity of the appointment was criticized in Australia, but see Keith, *Journal of Comparative Legislation*, xiii (1931), 259.

<sup>2</sup> The agreement has been duly accepted in 1931 by the Dominions; *Parliamentary Debates*, cclx. 289. Parts VIII-X are of minor importance and are not printed. India did not sign.

the Commonwealth of Australia, New Zealand, the Union of South Africa, the Irish Free State and Newfoundland, and the Government of India, having considered the report of the Conference on the Operation of Dominion Legislation and Merchant Shipping Legislation, 1929, undertake to propose any necessary legislation and take such other steps as may be required for the purpose of giving full effect to the provisions of the present Agreement with regard to merchant shipping.

*Interpretation.*

Article 1.—In this agreement, unless the context otherwise requires, the following expression has the meaning hereby assigned to it, that is to say:

'Part of the Commonwealth' means any part of the British Commonwealth of Nations the Government of which is a party to this Agreement.

## PART I

### COMMON STATUS

#### *Common Qualifications*

Article 2.—(1) No ship shall be registered in any port within the British Commonwealth so as to acquire the status and recognition mentioned in paragraph (2) of this Article unless it is owned wholly by persons of the following description, namely:

(a) Persons recognized by law throughout the British Commonwealth of Nations as having the status of natural born British subjects;

(b) Persons naturalized by or in pursuance of the law of some part of the British Commonwealth;

(c) Persons made denizens by letters of denization; and

(d) Bodies corporate established under and subject to the law of some part of the British

Commonwealth and having their principal place of business within the British Commonwealth.

(2) Every ship so owned and duly registered within the British Commonwealth shall possess a common status for all purposes and shall be entitled to the recognition usually accorded to British ships.

*Registry.*

Article 3.—The laws, regulations, forms, and procedure relating to the matters following, that is to say:

Obligation to Register; Certificate of Registry; Transfer and Transmissions; Mortgages; Certificates of Mortgage and Sale; Name of Ship; Registry of Alterations, Registry Anew, and Transfer of Registry; Incapacitated Persons; Trusts and Equitable Rights; Liability of Beneficial Owner; Managing Owner; Declarations, Inspection of Register and Fees; Returns, Evidence, and Forms; Forgery and False Declarations; Measurement of Ship and Tonnage;

shall be substantially the same throughout the British Commonwealth and so far as possible be based on Part I of the Merchant Shipping Act, 1894.

Article 4.—In order that there may be a complete list of ships registered in all parts of the British Commonwealth, for statistical purposes, particulars (such as the name of the ship, the registered number, the port to which she belongs, the name of the registered owner, and the tonnage) relating to all ships registered at their ports, will be forwarded by the administration of each part of the Commonwealth at convenient intervals to the Registrar-General of Shipping and Seamen in London. Copies of the complete list shall be forwarded annually to the administration of each part of the Commonwealth.

*National Colours.*

Article 5.—It being recognized that the proper national colours for all ships registered in any part of the Commonwealth shall be such as may be determined by the Government of that part, each part of the Commonwealth undertakes to prohibit under penalty (a) the use by ships registered in that part of any national colours other than those determined for those ships; (b) the hoisting on board any ship registered in that part of colours proper to a ship of war or resembling any of those colours, without proper warrant.

## PART II

## STANDARDS OF SAFETY

Article 6.—While each part of the Commonwealth will from time to time determine the standards with which its ships shall be required to comply in all matters relating to safety, every endeavour will be made to preserve uniformity and to maintain the standards at present in force.

Article 7.—Each Government which proposes to make an alteration of substance in these standards will give as long notice as practicable to the other Governments of the proposed alteration and of the reasons for it.

Article 8.—Subject to the provisions of Part IV, nothing in this Agreement affects the right of each part to apply to any ship trading to its ports its regulations regarding the safety of ships, their crews and passengers, except in so far as the ship complies with regulations accepted by the part as equivalent to its own regulations.

## PART III

## EXTRA-TERRITORIAL OPERATION OF LAWS

Article 9.—Save as otherwise specially provided in this Agreement, the laws relating to merchant

shipping in force in one part of the Commonwealth shall not be made to apply with extra-territorial effect to ships registered in another part unless the consent of that other part of the Commonwealth has been previously obtained:

Provided that nothing contained in this Article shall be deemed to restrict the power of each Part of the Commonwealth to regulate the coasting trade, sea fisheries, and fishing industry of that part.

#### PART IV

##### EQUAL TREATMENT

Article 10.—Each part of the British Commonwealth agrees to grant access to its ports to all ships registered in the British Commonwealth on equal terms, and undertakes that no laws or regulations relating to seagoing ships at any time in force in that part shall apply more favourably to ships registered in that part, or to the ships of any foreign country, than they apply to any ship registered in any other part of the Commonwealth.

Article 11.—While each part of the British Commonwealth may regulate its own coasting trade, it is agreed that any laws or regulations from time to time in force for that purpose shall treat all ships registered in the British Commonwealth in exactly the same manner as ships registered in that part, and not less favourably in any respect than ships of any foreign country.

Article 12.—Nothing in the present Agreement shall be deemed—

(i) to derogate from the right of every part of the Commonwealth to impose customs tariff duties on ships built outside that part; or

(ii) to restrict the right of the Government of each part of the Commonwealth to give financial assistance to ships registered in that part or its right to regulate the sea fisheries of that part.

## PART V

## SHIPS' ARTICLES

*Internal Discipline and Engagement and Discharge  
of Seamen*

Article 13.—The form and contents of ships' articles if first opened in a part of the Commonwealth, shall be those prescribed by the law of that part, and if first opened elsewhere than within the British Commonwealth, shall be those prescribed by the law of the part in which the ship is registered.

Article 14.—The powers and duties with respect to discipline on board a ship registered within the British Commonwealth shall, in so far as they are not derived from the ship's articles, be those made and provided by the laws and regulations in force in the part of the Commonwealth in which the ship is registered.

Provided that if and so long as a ship, registered in one part of the Commonwealth, is engaged wholly or mainly in the coasting trade of another part, the powers and duties with respect to such discipline may be those made and provided by the laws and regulations in force in that other part.

Provided also that in the case of a ship which is trading from a part of the Commonwealth in which the principal place of business of her owners is situated, and not trading to the part of the Commonwealth in which she is registered, the powers and duties with respect to such discipline may be those made and provided by the laws and regulations in force in the former part.

Article 15.—Provision shall be made by law in each part of the Commonwealth that whenever a seaman or apprentice deserts in that part from a ship registered in another part, any Court exercising summary jurisdiction in the part in which the

seaman or apprentice has deserted, and any Justice or Officer of such Court shall, on the application of the master of the ship, aid in apprehending the deserter, and, for that purpose may, on information given on oath, issue a warrant for his apprehension, and on proof of the desertion, order him to be conveyed on board his ship or delivered to the master or mate of his ship, or to the owner of the ship or his agent, to be so conveyed.

## PART VI

### CERTIFICATES OF OFFICERS

Article 16.—The standards of qualification to be required of applicants for certificates of competency and of service shall so far as possible be equal and alike throughout the British Commonwealth, and shall not be lower than those at present established.

Article 17.—Subject to any special provisions that may be made by any part of the Commonwealth as to the qualifications to be required of officers on ships engaged in its coasting trade, a valid certificate of competency or service granted by one part of the Commonwealth will be recognized throughout the British Commonwealth as indicating that the holder is duly qualified accordingly when serving on board any ship registered in that part.

## PART VII

### SHIPPING INQUIRIES

Article 18.—The Government of each part of the Commonwealth agrees to assist the Governments of the other parts by providing for officers to hold preliminary inquiries (including the taking of depositions) into casualties to ships registered in such other parts.

Article 19.—No Government of any part of the Commonwealth will cause a formal investigation to



be held into a casualty occurring to a ship registered in another part save at the request or with the consent of the Government of that part in which the ship is registered.

Provided that this restriction shall not apply when a casualty occurs on or near the coasts of a part of the Commonwealth or whilst the ship is wholly engaged in the coasting trade of a part of the Commonwealth.

Article 20.—In all parts of the Commonwealth the laws and regulations relating to the matters following, namely:

Constitution of courts having jurisdiction to hold formal investigations;

Holding of such courts with the assistance of assessors;

Classification of assessors according to their qualifications;

Selection of assessors according to the nature of the questions to be raised;

Notice of investigation and the service thereof;

Opportunity to be given to any person whose conduct may be impugned of making a defence;

Procedure on the hearing;

Rehearings and appeals;

shall be, so far as possible, alike, and shall be based upon the provisions relating to formal investigations contained in Part VI of the Merchant Shipping Act, 1894, and the Shipping Casualties and Appeals and Rehearings Rules, 1923, made pursuant thereto.

Provided that

(1) the Administration of that part of the Commonwealth in which a formal investigation is held shall alone be competent to order a rehearing thereof;

(2) an appeal from a decision of a court of formal investigation shall lie to a court in the

part of the Commonwealth in which the formal investigation was held and that court shall be similar in its constitution and jurisdiction to a Divisional Court of Admiralty in England;

(3) a court of formal investigation shall be empowered to cancel or suspend a certificate of competency or service granted by the Administration of another part of the Commonwealth so only as to effect its validity within the jurisdiction of the part in which the investigation is held, but the Administration by which the certificate was granted may adopt such cancellation or suspension.

Article 21.—Provisions shall be in force in each part of the Commonwealth similar, so far as possible, to those contained in Part VI of the Merchant Shipping Act, 1894, relating to the special inquiry that may be held when there is reason to believe that any master, mate, or certificated engineer is from incompetency or misconduct unfit to discharge his duties.

Provided that the power of a court holding such inquiry to cancel or suspend a certificate of competency or service granted by a part of the Commonwealth other than that in which the inquiry is held shall be similar to the power of a court of formal investigation under the last preceding article.<sup>1</sup>

<sup>1</sup> Under Art. 24 the agreement continues to Dec. 10, 1938, and may then be withdrawn from by any part on 12 months' notice. It may be varied at any time by common accord (Art. 25), and the Governments of any three parts may call a Conference at discretion (Art. 26). The agreement applies to all territories administered under the authority of any part of the Commonwealth, and to ships registered there.

## VII. THE STATUTE OF WESTMINSTER

1. *Mr. P. McGilligan, Dáil Éireann, July 16, 1931*

I MOVE:

That Dáil Éireann approves of the Report of the Commonwealth Conference, 1930, and recommends the Executive Council to take such steps as they think fit to give effect thereto.

I would like to call the attention of the House to the fact that those comparatively few—twelve or thirteen—pages of this Report which relate to those relations of Great Britain to the other members of the Commonwealth which were formerly regulated by a central Executive and a central Parliament mark, definitely and clearly, the end of an epoch. They are the last chapter in the history of one of the most highly organized and effective legal systems of which there is any record. I stated to the House two years ago that it was the purpose of the Conference of 1929 that the whole legal machinery of the old Colonial Empire should be taken asunder in so far as the Commonwealth of Nations was concerned.

In the year 1930 I submitted to the judgement of the House that the recommendations of the Conference of 1929 had carried out that purpose. The Conference of 1930 approved the recommendations of that of 1929, and that approval closes the story. The system which it took centuries to build up has been brought to an end by four years of assiduous concentrated collaboration between the lawyers and the statesmen of the States of the Commonwealth.

Deputies will agree with me when I say that there can be no two views on the question that when this country accepted the status of Canada in certain respects in 1921 the status of Canada then accepted was not a stereotyped legal formula. Therein lies

the kernel of the whole Treaty position and the key to the progress that has gone on—I will not say at our sole behest, or even always at our instance—since 1926. How well the founders of this State built the developments which have since taken place go to show. The task begun in 1926—the first Commonwealth Conference since the Treaty, in which we took an active part—is completed in the paragraphs written down in Part VI of this Report. What will be the result when the enactments referred to there are passed into law?

Let me take, first of all, the declaration set out on p. 18 of the Report:

No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressly declared in that Act that that Dominion has requested and consented to the enactment thereof.

That declaration amounts to an act of renunciation by the British Parliament to legislate for the members of the Commonwealth. If any Deputy has doubts about it let him consult the text of this Report on p. 18 itself. So sweeping was the declaration that it was feared that it put the British Parliament in a worse position *vis-à-vis* the members of the Commonwealth than that in which the Parliament of any State (not a member of the Commonwealth) stands in relation to other States generally.

I should explain that in more detail. The House is aware that, although the Parliament of the French Republic does not legislate for the German Reich, nevertheless, the laws of the French Republic can have effect in respect of acts done in German territory. The United Kingdom delegates at the Conference of 1930 feared that, if the declaration stood in the form first set out on p. 18, the effect would be to prevent any statute of the British Parliament from having 'the operation which the legislation of

one State normally has in relation to the territory of another'. In other words, they feared that the effect of a declaration in the form referred to would be to prevent an Act of the British Parliament which declared bigamy<sup>1</sup> unlawful having any effect if the bigamous act took place in, say, Canada or South Africa, whereas the bigamous act would be an offence punishable under its law if it took place in France or Germany. That view was met by the insertion of the words 'as part of the law of the Dominion' in the draft declaration in the place where it now occurs in italics.

But apart from this difficulty of interpretation, what is the essential doctrine fastened into that declaration? That declaration will not remain merely as a record in the report of a conference of delegates from the various parts of the Commonwealth. It will become at the end of this year an enactment in a British statute. And its effect then will be to destroy as a matter of law what has already been destroyed as a matter of practice, the legislative sovereignty of the British Parliament in the Commonwealth in the sense in which it existed and functioned since the foundations of the Colonial Empire were laid. The importance of that achievement is beyond question. I do not want to over-stress it, but I do not want to have the effect of it minimized.

If I am asked why this result could not have been achieved in another way, by an agreement, for example—an agreement resembling the Treaty of 1921, I will say that it could have been achieved in that way and that an agreement to effect the same result was in fact discussed. But so long as the result aimed at was secured it did not matter much how exactly it was carried out. But if I am asked

<sup>1</sup> See *Earl Russell's Case*, [1901] A.C. 446, where bigamy in the United States was held criminal; Keith, *Responsible Government in the Dominions* (1928), I. 323.

why was it proposed that the declaration referred to and the other declarations in this part of the Report should go into a British statute at all, my answer is this—a very simple answer—that you would have had a British statute in any event, a statute ratifying the agreement, but that, above all, you had to have an Act of that particular Parliament by which the powers now taken away, the rights now denied, were exercised. One has not heard of a Canadian statute applying to South Africa in the same way—i.e. of its own force and with the authority of a sovereign Parliament exercising jurisdiction in South Africa behind it—as that in which a British statute applied to Australia or Newfoundland. It was the British Parliament only which legislated in that way. Hence this declaratory British statute. Or, to put it in another way, this declaration must be understood in two senses, or rather, it must be viewed from two angles. It must be viewed from the point of view of the history which it ends as well as from that of the history which it begins. The last words in the long story of British legislative supremacy occur nowhere more fittingly than in a statute passed as its own deliberate act by the assembly most closely associated with that phenomenon. Lastly, there were the courts—you had to put an end to speculative judicial thought, you had to coerce the judicial mind, I do not say here, but in those States of the Commonwealth where the Imperial statute—as it was called—ran for so long, and where the swift sword of the Colonial Laws Validity Act had been wielded so frequently and dealt such quick disaster to the laws of their own Parliaments. And the House will agree that the only way in which to coerce the judgement of lawyers trained in such a tradition was by putting an end once and for all to the principle upon which it rested, putting an end to it in a definite legal way, a way which would

leave no margin whatever for those amazing speculations in which judges sometimes indulge—in a word, by an Act of Parliament.

I do not hesitate to say that the constitutional status of Canada would have advanced far beyond the stage which it had reached when the statesmen of that country had to exact the right to sign the Treaty of Versailles, had not the distinguished and learned judges of that Dominion failed to read aright the measure of her independence. But that chapter also ends in the declaration here made.

In the schedule on p. 19 of the Report the first clause is that containing the declaration that the Parliaments of the States of the Commonwealth have full power to pass laws having extra-territorial operation. I dealt fully with this clause last year and endeavoured to reply to some criticism of it from the benches opposite. The declaration is quite clear and I do not think that Deputies can have any doubt either as to its meaning or its importance.

But let me advert to an aspect of this question which the House should not lose sight of. When I say that the policy of what I must call for purposes of historical accuracy the Imperial Government was to confine the jurisdiction of the colonial assemblies to their own confines, and that that policy was broken by events, and that the purpose of this clause is to make the law square with the new political facts, I do not mean that the object or effect of this statute is, or will be, to write a new legal Constitution for the Commonwealth of Nations. Let there be no mistake about that. This clause illustrates very clearly the declaratory character of the whole statute. The House will observe that the clause is cast in a form which assumes the existence of the extra-territorial power at the present time. This statute will confer no new legal powers so far as the Irish Free State is concerned. It merely declares their present existence in the States of the

Commonwealth. It is a direction ; a definition, and a demonstration and proof in the most solemn form possible by the British Parliament that an entirely new situation has come into existence and that the former legal unitary State has gone the way of the former political unitary State and of the former diplomatic unitary State so far as States like Canada and ourselves are concerned.

A Deputy last year asked what interest we had in these things. He acknowledged that, so far as, say, Canada and South Africa were concerned, these clauses had a significance having regard to the historical background—the legal background—on which, so far as those countries were concerned, these events were going forward. That is precisely what I meant a moment ago when I said that you cannot approach the consideration of this subject as if it had no history, no genesis, no development and no background of that kind. It had such a background, and it is because it had, that this statutory method, so far as those countries are concerned, was regarded as desirable and necessary. I must tell the House that the question of method was discussed and explored.

If I have made that point clear I wish, before passing to the clause on the Colonial Laws Validity Act, to make one other observation, and it is this. The power of this Parliament to pass laws having extra-territorial operation has nowhere been denied, because it is undeniable. The matter has not come on a direct issue before our own courts, but in the only case in which it has fallen to be judicially considered the following language was used by Judge Fitzgibbon:

I am not prepared to hold that legislation in this country making it a crime for persons to conspire against the peace, order, and good government of this country, or to defraud our customs, or to violate our laws necessarily invalid because of the secondary opinion in



McLeod's case, [1891] A.C. 455, nor that our courts would not have full jurisdiction to deal with such offenders if they should happen to come within the limits of the Saorstát. (*Alexander v. Circuit Court Judge of Cork*, [1925] 2 I.R., p. 170.)

I refer to this dictum—a dictum which is significant although 'obiter'—for one purpose only, namely, to show that the form of this clause was advisedly declaratory, advisedly drawn in words which assume the existence at the present time of the powers to which it relates so far as the Irish Free State is concerned.

On the matter of the Colonial Laws Validity Act, Deputies will observe that the repeal of this statute is absolute and unconditional in respect of those members of the Commonwealth to which it was held to apply. It may be asked why the Act was not repealed in words such as these: 'The Colonial Laws Validity Act, 1865, shall be and is hereby repealed'; but it will be borne in mind that the Act is to remain so far as the colonies and dependencies are concerned, and the proper form to adopt was the form found in this clause. There is a clean-cut repeal so far as the members of the Commonwealth to which I have referred were affected by the Act at any time.

We come then to the recitals to be inserted in the proposed legislation. The first recital relates to the non-application of future statutes of the British Parliament to the States of the Commonwealth. I want the House to look again in this connexion at paragraph 55 of the Report of 1929. 'Practical considerations', it says, 'affecting both the drafting of Bills and the interpretation of statutes make it desirable that this principle should also be expressed in the enacting part of the Act.' That is another way of putting the point which I have been endeavouring to emphasize all through. A recital would have been sufficient in so far as we were

concerned. But you had the other States of the Commonwealth with a long tradition of British legislation operating in their territory. Those States wanted a legal termination of that situation. They wanted something more than a recital in the statute—which had to be passed anyway to repeal the Colonial Laws Validity Act, e.g. they wanted an actual enactment. I think that Deputies will agree that having regard to the legal background of the whole matter in Canada or Australia this was the proper course for those States to adopt.

The second recital is that relating to the Crown. I stated to the House last year the reason for this particular recital. But I should like to restate it in a very few words. The legal ties that bound, say, Canada and Australia to the United Kingdom will disappear when this Act becomes law. The legal restrictions upon the powers of the Parliament of Canada and the Parliament of Australia will be removed. There will be no limitation, no restriction whatever.

The House will notice that that fact is repeated in various ways through the Report of 1929. The frequency of the phrase 'the new position' is not accidental; it is deliberate. There is the ending of a chapter, an epoch—a history in which the legal and legislative predominance of the United Kingdom Parliament is plain to be seen. But 'by the removal of all restrictions upon the legislative powers of the Parliaments of the Dominions', says paragraph 58 of the Report of 1929—'and the consequent effective recognition of the equality of those Parliaments with the Parliament of the United Kingdom, the law will be brought into harmony with the root principle of equality governing the free associations of the members of the British Commonwealth of Nations'. The House will notice the emphasis throughout upon what is being done. The law, the legal position, is being made to square with the

central and predominant political fact of absolute freedom and unequivocal co-equality. And in the light of that conception of the matter the recital relating to the Crown is inserted. The States of the Commonwealth control the Crown and the prerogatives of the Crown absolutely. But the Crown function is accepted in the arrangement to which we have become parties. You could not, therefore, have a series of Acts of Parliament throughout the Commonwealth dealing with, say, the succession in different ways.<sup>1</sup> That would be undesirable. The function of the Crown may be exercised in a different way here from that in which it is exercised in Canada; that is a matter of the substance and form of the advice given here and that given in Canada. You could legislate for the Crown here in a way different from that in which it is legislated for in the United Kingdom. The United Kingdom might, e.g., restrict a certain royal prerogative by statute. The Oireachtas might abolish the same prerogative so far as the Irish Free State is concerned. There is no doubt whatever about that. But there had, in the nature of things, to be some arrangement to prevent the whole association from being confused within itself by conflicting legislation as to such a matter as the succession. The association is a free association. Freely, therefore, the members of it undertook this arrangement relating to the Crown which is the symbol of the free association of them all.

I do not fear that the House will deduce from this arrangement any doubts as to the several capacities of the King, or draw any erroneous conclusion to the effect that the States of the Commonwealth are a political or diplomatic unit. When a Heads of States Treaty is ratified by the King on the advice

<sup>1</sup> The insertion of the point at all was strongly deprecated by Mr. Latham, Commonwealth House of Representatives, July 17, 1931.

of the Government of the Irish Free State, the whole transaction is the transaction of the Irish Free State. The King acting on the advice of the British Government can no more contract for the Irish Free State than can the King of Italy or the Mikado of Japan. The conclusion of the Treaty in the Heads of States form is merely an old-established international usage. In its binding force it differs in no way whatever as a matter of international law from an inter-governmental agreement. But what I want to emphasize is the fact that no argument whatever is open on the agreement as to the King to the effect that for diplomatic purposes, or political purposes, or purposes of international life and action, the Commonwealth of Nations is a single entity. When we agreed to this recital in the form in which it appears, the form which says that 'the Crown is the symbol of the free association of the members of the British Commonwealth of Nations', and went on to say that 'any alteration in the law touching' the matters referred to in this context would require the assent of all the Parliaments of the Commonwealth, we were simply stating that in the exercise of our sovereign legislative powers which exist apart from and over and above all other considerations, which are supreme, paramount, and uncontrolled, we would have regard to the desirability for uniformity of reference to the symbol of the association and the desirability for avoidance of legal confusion in regard to the succession. That is the extent of the meaning of this recital. It assumes the absolute inherent right of each of the Parliaments to legislate for the Crown without regard to these considerations.

On the matter of nationality the Report affirms paragraphs 73 to 78 inclusive, of the Report of 1929. It says that 'it is for each member of the Commonwealth to define for itself its own nationals'. The law of each nation of the Commonwealth will hence-

forth confer a status on its nationals which will be recognized throughout the Commonwealth and outside the Commonwealth. Paragraph (4) on page 20 says that 'the possession of the common status in virtue of the law for the time being in force in any part of the Commonwealth should carry with it the recognition of that status by the law of every other part of the Commonwealth'. In other words our law will confer the status and the law of Canada and South Africa, &c., will recognize the status thus conferred. Similarly our law will recognize the status conferred by the Canadian or the South African statute. This arrangement is based upon two things: the separate and distinct nationhood of this country from Great Britain, of Canada from New Zealand, &c., and the desirability for mutual recognition of the status of the nationals of the various countries of the Commonwealth. The essential point is that you have not a single Commonwealth nationality based upon a single law. It is not a single Commonwealth nationality at all, or even a dual nationality. The Irish Free State national will be that and nothing else so far as his nationality is concerned. His own nationality law will rule him, and his own State, through its representatives abroad, will protect him. The treaty benefits of our treaties with other countries will accrue to him by virtue of his Irish nationality. And the recognition of his Irish nationality will be Commonwealth-wide and world-wide.

We had one purpose in 1926, and that was that there must be uprooted from the whole system of this State the British Government; and in substitution for that there was accepted the British Monarch. He is a King who functions entirely, so far as Irish affairs are concerned, at the will of the Irish Government, and that was the summing up of the whole aim and the whole result of the conferences of 1926, 1929, and 1930: that one had to get completely rid

of any power, either actual or feared, that the British Government had in relation to this country. In substitution for that under the Treaty there was accepted the monarchy, as I say, a monarchy in every respect in relation to Irish affairs, subject to the control of an Irish Government. That is the result of the 1926, 1929, and 1930 conferences. For these reasons, and because that is the result aimed at, and the result achieved, I ask the House to pass the resolution that is before it.

2. *Mr. S. Lemass, Dáil Éireann, July 17, 1931*

The Minister for External Affairs told us when speaking that this Act was in the nature of an act of renunciation. I say it is nothing of the kind. He said that it destroyed British legislative supremacy in the Commonwealth, and I invite him or any other member of the Dáil to show in that Act what section, recital, or phrase can be interpreted to have that significance. I say that, on the contrary, the Act has been very carefully drafted to preserve the theoretical right of the British Parliament to legislate for the whole of the British Empire. It provides mainly that no British Act passed by the British Parliament after the enactment of the new statute, shall operate as part of the law of any Dominion, except at the request, and with the consent of that Dominion. It is undoubtedly true that the enactment of that statute will in practice mean that the Parliaments of the various Dominions will be able to legislate without British interference, but the theoretical supremacy of the British Parliament is maintained. Its legal right to legislate for the British Empire is not destroyed. On the contrary, the power to legislate, is by inference, confirmed. The Minister told us that he was concerned in these negotiations only with the end to be achieved and not with the method by which that end was achieved.

I think that was his fundamental mistake. I

think that had he concerned himself a little more with the method he would have realized that in the proposal before us the very principle for which he maintains he fought has been surrendered. I want to point out to the Dáil that, if the legislative independence of the Oireachtas of the Free State or the Parliament of any Dominion is to depend in law upon a British statute, then it is dependent upon the consent of the majority of the British Parliament. What one British Parliament has enacted another British Parliament can repeal, and the position will be that, at any time, by simply repealing that Act the British Parliament can reassert its right to legislate for this State or any other Dominion without the consent of the Parliament of this State or of that Dominion. The Minister made a number of statements the accuracy of which I beg leave to doubt. He told us that, when the proposed statute is enacted in England, the position will be that this Parliament will be able to abolish any of the Royal prerogatives in so far as they relate to the Free State. I say that is not so. I say there is nothing in the Act which justifies that contention.

I ask the Minister to state definitely, for example, whether it is possible for us to abolish the King as a factor in legislation here. Is it possible? That is the kernel of the question. Can we abolish the King as a factor in legislation here? Can we amend our Constitution in accordance with our own wishes? Can we abolish the Act which prescribes that anything in our Constitution which is not in conformity with the Treaty of 1921 is null and void? If we cannot do these things all this talk about our legislative independence is so much humbug. All that talk is only an attempt to deceive the people as to what our real status is. If it is the desire of the Executive Council or the Minister for External Affairs to get to the position in which the last vestige of British domination here will be destroyed, then

we are with him, but we do not think he has helped us to get to that position by pretending that we are already there. No cause was ever brought to victory by its champion pretending that it was already won.

If the British Parliament is prepared to do what the Minister says it is prepared to do, to recognize us as an independent State equal with them in all respects, then there are two ways and two ways only in which it can achieve that end: either they can pass an Act declaring our independence, such an Act as that which declared the termination of the British sovereignty over the United States of America——

MR. LAW: And which it can repeal by the Deputy's own argument.

MR. LEMASS: Undoubtedly.

MR. MCGILLIGAN: Therefore, you are stuck as you are for all time.

MR. LEMASS: If the British Parliament wants to concede independence to us there are two ways in which they can do it. That is one of the ways. I put it to the Minister that the British Parliament conceded independence to the American people after the American people had got it.

MR. MCGILLIGAN: How did they do it?

MR. LEMASS: By passing an Act terminating their sovereignty.

MR. MCGILLIGAN: By an Act? Therefore, according to the Deputy's argument they can repeal that Act to-morrow.

AN CEANN COMHAIRLE: Let the Deputy continue.

MR. DE VALERA: If they were able.

MR. LEMASS: They would never have passed it if they were able to continue their sovereignty. The Minister has revealed the position exactly as it is. The British Parliament maintains its sovereignty in any State in which it has the power to maintain it. It has not destroyed its sovereignty here by this



Act because it has the power to maintain it here. If the British Parliament was, as the Minister said it was, willing to concede a status to us equal in every respect to the status enjoyed by Britain itself, then it would not succeed in that end by the passage of such an Act as is contained in this report. It could do it by passing an Act similar to that which terminated the sovereignty of the British Parliament over the people of the United States. It could do so, perhaps, by destroying the legal principle of the unity of the Crown, by dividing the King into six Kings and making each of the Dominions a separate kingdom, which it has not done. It has done neither of these things. In this new Act they are, while appearing to concede something, merely strengthening their position. While pretending to remove legislative anachronisms they are affirming afresh their theoretical legal superiority.

3. *Mr. McGilligan, Dáil Éireann, July 17, 1931*

There is, I am told, a fundamental objection to a British statute. What one British Parliament can do by statute another British Parliament can undo, and, therefore, the whole situation is jeopardized. How is the Republic going to be established, if certain people can ever ultimately establish it? Is it going to be jeopardized if a British statute takes cognizance of it, in so far as the setting up of a republic means the separation of a particular piece of territory which the British at present, as evidenced by their Parliamentary associations with it, believe belongs to them? How are the British going to deal, say, with the Six Counties, if and when a republic is declared and established for all Ireland? Are Deputies going to state, if the British do pass an Act of renunciation with regard to the Six Counties, that that is not going to be accepted because the moment after they pass that they can repeal it? Deputy Law dealt with that. General Hertzog dealt

with that. We dealt with that in the discussions in the Imperial Conference, and in those discussions the act of renunciation with regard to America was on occasions referred to. General Hertzog on one occasion said that, if he was asked to face up to the theory that the legislative supremacy of the British Parliament was always there and that by a legislative Act it could to-morrow take over again the American colonies, he could afford to laugh at such a theory and could afford not to pay attention to it. Further, the statement was made by several delegates to the Conference, and joined in by General Hertzog, that, if there was ever any question of a British Parliament later repealing this Statute of Westminster which the Dominions now wanted, the answer was that the moment that repeal was attempted the whole Commonwealth of Nations would be broken up.

There would be precedents for secession all over the Commonwealth if and when that happened. No British Government of this day would dare to declare that its Parliament had the right of itself to legislate for any of the members of the Commonwealth. Deputies opposite have, however, to get themselves out of the dilemma of their own making. The freedom of the country has to be got some way. It is to be got by force apparently, because, we understand from Deputy de Valera, America got her freedom in that way, and it is the only way, apparently, that freedom can be got. When we are in possession of superior force and able to impose our will upon the English people, then a republic and separatism and everything else is to be achieved. How is it to be recognized? The British Government must recognize that fact for themselves. Is the whole of the new situation to be jeopardized simply because there must be an act of the British Parliament recognizing it, and if it is not to be so jeopardized, then how is what is happening here

jeopardized by the fact that there is to be a statute passed at Westminster, particularly when that statute is limited to certain items, and particularly when this statute has been demanded by the nations of the Commonwealth, most of whom are not supposed to be, nationally, so far advanced as we are, and yet demand that statute now as of right. The situation facing the British is that if that were not passed as requested, in the face of the request of the Dominions, or if it were repealed afterwards, then the Commonwealth of Nations is definitely at an end.

The position we find ourselves in at the moment is this: The only difference which I can see in the constitutional position of the Free State now and what it might be under a declared republic amounts to this—that at the moment there is a constitutional monarch who is supposed to represent the will of the people of this country. In the other situation there will be somebody called the President, also supposed to represent the will of the people of this country. And nobody has dared to say that at present the constitutional relationship between this country and the King is such that the King can deviate in the slightest way from the advice tendered to him, on any and every point by the Government of this country—

MR. DE VALERA: Suppose he did.

MR. MCGILLIGAN: Suppose he did. Suppose the President of the Republic also failed to recognize the will of the country?

MR. DE VALERA: Keep to the King.

MR. MCGILLIGAN: The situation applies to both, the one is as likely to err as the other.

MR. DE VALERA: And suppose he did.

MR. MCGILLIGAN: I ask the Deputy to face up to the same question with regard to the President. Then the situation would have changed and—

MR. DE VALERA: That would be easily dealt with.

MR. MCGILLIGAN: And the other would also be easily dealt with.

MR. DE VALERA: How?

MR. MCGILLIGAN: That is the point at which to make it clear you are not having that interference. The situation as accepted is that of a constitutional monarchy in which the monarch definitely obeys the will of the people, and if he ceases to obey, he ceases to be constitutionally monarch. As to what is likely to happen in the future let us look at what has happened in the past five or ten years. There has been no deviation from the advice tendered to the King. Let us look over ten years after all the bogies that were raised. We were told that legislation passed would not be signed; the King would intervene at almost every point; he would delay legislation. Yet never was there an example given by anybody where the King deviated from the advice tendered to him.

MR. DE VALERA: Because there was never an occasion where there was any likelihood that he would.

MR. MCGILLIGAN: Very good; there never was an occasion——

MR. DE VALERA: You were doing what was required of you by the other side.

MR. MCGILLIGAN: The situation is such that for ten years the will of the Irish people has been made effective; that there never was any reason even for the King to attempt to deviate from that binding advice. Ten years! and the possibly worst ten years constitutionally in the history of this country, when it was fitting itself into the new situation, and yet no example of deviation can be quoted! So far from it that Deputy de Valera now says there was no reason for any deviation. The President or the King, both subject to the will of the people, as expressed through their Parliamentary institutions, yet we are going to have more trouble, something approach

ing chaos if necessary, in order to get the difference established as between a President obeying the will of the people and a King obeying the will of the people!

Deputy de Valera wound up by saying that he regards this country as a separate nation and a separate people in no way dependent upon British statutes. I have said that at three Imperial Conferences, asserted the separateness of the nationhood of this country, the separateness of the people in a lot of their ideals and in the generality of their make-up, and asserted that we were never in the past and were not going to be dependent on a British statute for that separateness. So in that I agree with the Deputy, but is that in conflict with the documents before the people to-day? Deputy Lemass thinks that we might have come to the point of separating up the King and so have achieved six kingdoms. I wonder how far we are off that? I think the division as between that situation and that in which we now find ourselves is very slight indeed. There is the single person of the King. We might say there is a single physical crown upon his head, but outside these two items there is no question of unity as between members of the Commonwealth. The King moves and acts in relation to Irish affairs as Irish Ministers tell him to move and act, and nobody else can tell him what to do in relation to Irish affairs, while Irish Ministers cannot tell him anything of what he is to do except in relation to Irish affairs. The difference between that and the six kingdoms specially and clearly announced is very slight indeed. That is where we have progressed from the 1921 point.

The last thing is the question of the Privy Council. I definitely did not refer to that because that will come up as a separate and special item by itself when legislation is introduced.

MR. LEMASS: When?

MR. MCGILLIGAN: That legislation is in process of preparation. I do not know when. It depends entirely—

MR. DE VALERA: When you can, I suppose.

MR. MCGILLIGAN: Possibly. It would not be a bad answer to the Deputy who has to-day revealed his weakness in face of the general situation. But we do know what we can do in this. It is, however, difficult legislation. It is very easy to do one small and simple thing in regard to it, but it is not easy to deal with that big question in a comprehensive way. It may take a considerable time to draw up the Bill required. As far as the Imperial Conference Report is concerned, as the Deputy said, it left the situation as it was. I agree, but his view of the situation as it was is not likely to be the same as my view of it. What was the situation? The 1926 Conference Report states it. We brought this matter up at the 1929 Conference. It was not quite appropriate to that discussion. It was brought up again in 1930 and there is nothing in that Report for or against the 1926 position, and the 1926 position, as far as the principle was concerned, was quite satisfactory to us. The matter was definitely discussed in 1930, and remembering that discussion, I would like to say that there is no British Government in existence, or likely to be in existence for many years, which would dare to say to the Commonwealth as a whole that if it wants to get rid of the Privy Council that wish cannot be accepted. Into that situation we will fit our particular case and fit the particular legislation we have to deal with it when we consider it suitable. That will be as early as we can get the question thoroughly considered and get legislation properly brought forward.<sup>1</sup>

Question put.

<sup>1</sup> For arguments against the appeal as a constitutional anomaly and as affording no useful aid to a minority see Mr. McGilligan's article, *The Star*, 1931, p. 207.

4. *Mr. McGilligan, Seanad Éireann, July 23, 1931*

In connexion with the discipline of armed forces, a point as to the meaning of consent has been raised. May I in reply refer to the Report where it deals with this matter? It says:

It is assumed that all Governments will desire to take such action as may be necessary to secure (1) that the military discipline of any of the armed forces of the Commonwealth when present, by consent, within territory of another, rests upon a statutory basis, and (2) that there shall be no period of time during which the legal basis of military discipline could on any ground be impeached.

But it adds—and this should be stressed:

The method by which the above two objects can best be attained must necessarily be a matter for the Governments themselves.

Senators who want to argue about what consent means will have their opportunity when legislation to give statutory effect to that particular recommendation comes along. You are binding yourself to nothing by passing this motion except this, but you are accepting this: that if, with our consent, any forces of a part of the Commonwealth come here, they shall be governed by their own code of military discipline while here with our consent. If we send a horse-jumping team to Olympia, so far as the members of it misconduct themselves in any way, they shall be governed by their own military code and not by the ordinary civil code of England. That is the principle, and when it comes to be given statutory effect we will be able to discuss the incidents.

Senator Johnson told us—and he was fortified by Senator O'Farrell—what their attitude on the whole Treaty position was. I do not want to refer to what he said with regard to the past, because I think the Senator made that clear on more than one

occasion. He said that the idea of his Party<sup>1</sup> was that the Treaty was accepted and should be kept until such time as either social, national, or economic growth required a change. Can anybody say that that is limiting the march of this nation? Can anybody say that I as a member of the Government, or any other member of the Government, have by this Report set a limit to the march of this nation? Let us hear the Opposition point of view as expressed by Senator O'Doherty. He felt that Senator Johnson's speech was ludicrous, because in its fundamentals it was very different from the Senator's. He said it was laughable to hear Senator Johnson's point of view. Then he brought us to the heart of things. According to Senator O'Doherty, the Parliament of this country owes its existence to a British Statute because, according to him, there were Articles of Agreement implemented by a British Act of Parliament. So it is to a British Act that the Senator owes his position as a Senator. Do all the members of the Senator's Party sit here because their positions are assured to them by a British Act of Parliament? Do they not think they are founded upon the expression of some part of the will of the people of this country? Does their position depend entirely on the fact that there were Articles of Agreement, and that that Treaty was implemented only by a British Act of Parliament? Do they take up the position that was taken up in the other House by members of that Party, that the true Government of this country lies outside of the Oireachtas, or what is the position? Senator O'Doherty is aghast that this 'sovereign' Parliament invites another Parliament to make laws for it. Not in this Report. It invites another sovereign Parliament to take certain things off its Statute Book. It invites it to pass no legislation for this country, and never did. Merely putting this Report before the House,

<sup>1</sup> The Labour Party.



according to the Senator, indicates that the British Parliament in London is supreme in the British Empire. If that Report can be read with any understanding by the Seanad, Senators will see that, whatever might have been the position in the past, it indicates that for the future the whole idea of supremacy throughout the Empire has disappeared, and this marks the end of that epoch. So far is the bringing of the Report of that Conference before this Parliament from arguing any subserviency to the British Parliament, that it absolutely demonstrates how completely any element of subserviency has disappeared.

It we pass the motion the Senator is afraid that there is going to be a rigid Constitution. He wonders, are we going to be tied up with regard to matters of common concern, defence and a common judiciary? Senator Connolly let his imagination roam, and saw quotas for the Navy, quotas for the Army, and quotas of imports and exports. I cannot attend to that sort of calculation unless I am directed to some paragraph in the Report from which it is demonstrable that this rigidity and these quotas are emerging. Then I will deal with it. You cannot minister to a mind diseased, and the mind diseased with bogies is the one least of all subject to any sort of cure. Where is there anything that any of these diseased minds can lean on in the Report, to show quotas for the Navy, quotas for the Army, quotas with regard to imports or exports, or a common judiciary? They are not there, and it is only imagination that conjures them in there.

Senator O'Doherty dealt with the King in relation to this country. Senator Johnson more accurately described the position of the King in this country. 'A legislative shadow.' One does not like using that phrase, because it will be written up as if there was a tinge of contempt in it. I do not want any contempt or slight to be read into my phrase.

I am speaking accurately of the relationship of the King to Irish affairs. It is such that he cannot act except on the advice of Irish Ministers, and Irish Ministers cannot advise him, except on Irish affairs. That is as clear cut as a thing can be. If Senators like to put the phrase 'cypher' or 'shadow' upon that situation they can. It is the constitutional situation. Senator O'Doherty asked 'Why send men to their death for cyphers?' As between the King in that position, and the President of a Republic in exactly the same position there is no reason why one single drop of blood should be shed.

Two developments happened this year. I call them of minor importance, but to the constitutional lawyer they indicate a certain tendency and how far that tendency goes. In the course of our various discussions and examinations of the relationship between this country and Great Britain we came on several small anomalies. One of these was raised by some text-book, where it was argued that because a document was sealed in a particular way, it could be said to be sealed under the authority of a British Secretary of State. We thought it better to attack that situation. The argument ran this way: The seal is in the possession of a particular Secretary of State, and can only be released on a warrant issued in a particular way. It could, therefore, be said that, as long as a British Secretary of State controls the stamping of certain documents, say in Treaty making, in that way a British Minister controls whether you make a Treaty or not.

We knew, for we had it asserted to us, that there was no control in that. The seals, we know, would be released as often as required. We thought however that as a permanent situation it was not good and we urged that we should have seals of our own, kept under our own control, and issued for the stamping of documents when we said they should be issued. That proposition was accepted,

and the seals will come into being one of these days.<sup>1</sup>

There was a second point raised, that because, when certain matters had to be communicated to the King, the old channel of the Dominion Office was used, it could be said the channel of communication was capable of being blocked and that a Dominion Secretary, carrying to the King the advice of an Irish Ministry, might change and distort it. Although we knew that such a fear was fantastic and the danger most remote we claimed the right of direct access and advice, and that was granted. All these are small things in themselves, but important from the angle of constitutional development. Digging into history will throw up certain anomalous things from time to time. These were not of sufficient importance to raise them as extreme matters in any extreme way at an Imperial Conference, but when they were raised they were met at once, and have helped to establish the clearest situation with regard to the King and his attitude towards Irish affairs.

5. *The Rt. Hon. R. B. Bennett, House of Commons, Canada, June 30, 1931*

(After explaining the case of *Nadan v. R.*,<sup>2</sup> which the Privy Council ruled that the attempt of the Parliament of Canada to cut off appeals in criminal cases to the Council was repugnant to the Judicial Committee Act, 1844, and therefore void):

The Conference of 1929 dealt with all these matters and recommended that a United Kingdom statute should be passed providing that the Colonial Laws Validity Act should cease to apply to any law made by the Parliament of a Dominion, that no law

<sup>1</sup> On the importance of this point see Keith, *Journal of Comparative Legislation*, xiii (1931), 37, 255; xiv (1932), 109, 110; *The Sovereignty of the British Dominions*, pp. 421-3.

<sup>2</sup> [1926] A.C. 482; Keith, *Responsible Government in the Dominions* (1928), ii, 1087 f.

passed by a Dominion should be void or inoperative for repugnancy to United Kingdom legislation, and in positive terms that a Dominion Parliament should have the power to repeal any United Kingdom Act so far as it was part of the law of the Dominion. That, hon. Members will observe, is to place us on an equality of status with Great Britain herself so far as legislative power is concerned, so that we might enact a statute which would repeal a statute passed by the United Kingdom Parliament, the Imperial Parliament so-called, if such statute was desired.

The third finding of the Conference was that, while the power of the United Kingdom Parliament to legislate for the whole Empire could not and need not be formally renounced, steps should be taken to prevent such legislation except at the express request of the Dominion concerned. I need hardly point out to this Chamber that no Conference constituted as was the Conference to which I have referred has for a single moment thought of renouncing the supremacy of the Imperial Parliament, lest it be taken as a termination of the ties that bind together under the Crown all the overseas Dominions. So, while the Conference took steps to declare that only if as and when the Dominion concerned requested the Imperial Parliament to act would it act in the passing of a statute, there was no occasion for the moment to take formal action to repeal or in any sense to lessen the relation between the Imperial Parliament and our own with regard to the matter in question.

The fourth finding was that in the vital matter of succession to the common throne, action by all the Dominion Parliaments as well as the United Kingdom Parliament should be required to effect a change. I suggest it is not necessary to dwell upon that more particularly. It was desirable that in legislating in the matter of succession to the

common throne we should make a declaration that no change in respect to that matter should be had unless by the common action of all concerned.

Then follows the last paragraph that express provisions should be included in the United Kingdom Act to make it clear that the new Dominion powers would not confer any new power to repeal or alter the constitutional acts of the federal Dominions or to make laws on any solely provincial or State matters. About that clause some difficulty has of course arisen. This may be the opportune time to say that under the present constitutional practice in this Dominion it is only necessary for this Parliament by a majority—and this Parliament includes the Commons and the Senate—humbly to address His Majesty asking that legislation be enacted to bring about the passing of legislation amending the British North America Act. That has been the practice heretofore. Amendments to the British North America Act were brought about by this Parliament passing an address. When that address was forwarded to Westminster the statute was passed in the terms in which the address sought to have it enacted. That raised a question of very considerable importance. . . .

Just prior to leaving for the Conference of 1930 I received a communication from the province of Ontario saying that they did not desire that these changes should take place until they had an opportunity to be heard. I also received a communication from the province of Quebec. It is not necessary at this time to relate fully the attitude of the provinces, but they agreed that, in as much as their constitutional rights as defined by the original Act might be amended in the opinion of the governments of those provinces by this Parliament by a majority vote, they should have the opportunity before any such action was taken to present their views and make known their decisions. . . .

Obviously the position of the Canadian delegation was one of some difficulty. I at once made the announcement to the Conference that I had voted in this House for the adoption of the 1929 Report, and that I did not purpose to change my view merely because my status had been changed. Therefore the next problem was as to what should be done at the moment to safeguard the interests of Ontario, Quebec, and the other provinces and not in any sense stop or prevent action being taken by the Conference for the Empire as a whole. I am bound to say the delegates from the other parts of the Empire were extremely courteous in that regard. These paragraphs were inserted in the Report.<sup>1</sup>

I need not dwell upon those provisions. It is sufficient to say that, those provisions having been inserted, on my return to Canada I communicated with the various provincial governments, and on the 23rd February, 1931, I invited them to attend a Conference in this city for the purpose of dealing with the matter referred to. The Conference met in this city and a draft was prepared of the Statute of Westminster from the proceedings of the Imperial Conference of 1926 and 1930, and we were fortunate in being able without much delay to arrive at a conclusion. I think it will be a matter of satisfaction to the House to know that the representatives of the provinces and the Dominion unanimously agreed that we should insert as a section of the Statute of Westminster the section which is now before the House: '(1) Nothing in this Act shall be deemed to apply to the repeal, amendment or alteration of the British North America Acts 1867-1930, or any order, rule or regulation made thereunder.' In other words, lest it be concluded by inference that the right of the provinces as defined by the British North America Act had been

<sup>1</sup> See pp. 212, 213, *ante*; Mr. Bennett became Prime Minister in 1930, as a result of the General Election.

by reason of this statute curtailed, lessened, modified, or repealed, we made in the statute itself a declaration that such is not the case. Then Sub-section 2 proceeds: 'The powers conferred by this Act upon the Parliament of Canada or upon the legislature of the provinces shall be restricted to the enactment of laws in relation to matters within the competence of the Parliament of Canada or of any of the legislatures of the provinces respectively.' It was thought by some representing provincial legislatures that under provisions as ample as these it might be competent for a Dominion Parliament to trench upon the jurisdiction of a provincial legislature and exercise powers beyond its competence. For instance it was felt that it might be possible for this Parliament to extend its jurisdiction by trenching upon the jurisdiction of the provinces to matters that are distinctly, and as the law now stands solely, within their jurisdiction, so it is provided by the sub-section to which I have referred that there shall be by reason of this law no alteration in the authority or power of this Parliament to deal with legislation which, under Section 92 and the other sections of the British North America Act, is granted solely to the legislatures of the provinces. . . .

MR. RALSTON: Does my right hon. Friend think that within the four corners of this Act there is any provision conferring powers on the provincial legislatures?

MR. BENNETT: Except in so far as the removal of the restrictions [of the Colonial Laws Validity Act] would operate to confer that power, it is not a conferring power. I will give my hon. Friend an illustration which I think will satisfy him on that point. The rules of evidence have, in some instances, become statutory in England, and those rules of evidence in some particulars only have been embodied in the jurisprudence of provinces. It will

<sup>1</sup> See s. 7 (2) of the Statute.

now be competent for the province to repeal the operation of that Imperial statute, which otherwise it could not do. In the province of British Columbia, as my hon. Friend the Minister of Justice reminds me, there is an illustration of that situation.

6. *The Hon. Ernest Lapointe, House of Commons, Canada, June 30, 1931*

There is a change, which I commend, as a result of the Conference which was called by my right hon. Friend the Prime Minister between the provinces and the Dominion, and which change is contained in Section 3 of the paragraph concerning the constitution of Canada and the provinces. Therein it is stated that the provisions of the section of that Act repealing the Colonial Laws Validity Act with regard to the legislation of this Dominion shall extend to laws made by any of the provinces of Canada and to the powers of the legislatures of such provinces. This is an extension which I commend. Of course, the special Conference of 1929 could not make any such recommendation because we had no mandate from the provinces to ask for such a change. . . .

There are a couple of questions which I should like to touch upon very briefly. There is first the question of the right of amending our constitution. . . . I never felt that the necessity of having to confirm by Imperial legislation any change that we desire to make in the British North America Act, means essentially that Canada is a subordinate country. This is due to a condition peculiar to our country, and is the result of the situation which existed at the time of confederation and of certain conditions which prevail in Canada. I stated and I still state that this is not at all imposed upon us. It is a condition which comes to us of our own free will. Indeed, the Imperial Parliament would be pleased at all times to be rid of the necessity of having to enact legislation which might be difficult



when complications might arise as between the Government of the Dominion and the Governments of the provinces, or the Government of one province, concerning some change which might be asked in the Constitution. But this was accepted by the parties to the confederation. It has been accepted since on account of our peculiar conditions and it is not at all imposed by a sovereign power upon a subordinate power. This might be likened to a condition which the Permanent Court of International Justice stated with regard to the European Commission of the Danube case which was submitted to that Court last year or the year before. The Permanent Court of International Justice said: 'Restrictions on the exercise of sovereign rights accepted by treaty by the state concerned cannot be considered as an infringement of sovereignty.'<sup>1</sup> I think this must be considered a similar situation when the case of the necessity of an Imperial Act with regard to a change in our constitution is concerned. As I stated, that was the view of experts, but there is no doubt that it gives rise to misunderstandings, not only in this country but abroad, and if there might be devised a system whereby Canada, in common with other Dominions of the Empire and all federated countries of the world, could in some way, as a result of a Conference with the provinces, amend her own constitution, that source of misunderstanding would certainly disappear. Especially is this desirable on account of the view which the Prime Minister has to my knowledge expressed in the House on two or three occasions. My right hon. Friend has taken issue with me on this matter, and he has plainly argued that, as long as Canada has not the power to amend her own constitution, there cannot be equality of status. Everybody now accepts the doctrine of the equality of status. I do not think there is any hon. member who is opposed to that doctrine, and,

<sup>1</sup> See Keith, *Journal of Comparative Legislation*, xiii (1931), 30.

if my right hon. Friend believes now, as he did before, that there cannot be equality of status as long as that condition remains, it is his paramount duty to take steps in order that this obstacle should disappear. So that I may not be charged with misrepresenting my right hon. Friend in that regard, I find that at the regular session of 1930, speaking on the address, he is reported on p. 24 of Hansard as saying:

That report (of the Conference of 1929) makes certain recommendations, but, Sir, can there be any such thing as equality of status in this Dominion and no subordination of one Parliament to another, if this Parliament is deprived of the right to frame our own constitution? That is the test, the supreme test, of equality of status....

So there is no doubt in the mind of my right hon. Friend that in order to put into effect the decisions arrived at unanimously at the Conference of 1926, and I might add at the Conferences of 1929 and 1930, in order to give effect to the principles there enunciated and accepted by all, he must see to it, if he is still of the same mind, that Canada secures the right and the power to amend its own constitution.

MR. BENNETT: Perhaps the hon. gentleman knows that it was suggested that there should be a Conference with the provinces at a later date, to which all the representatives of the provinces who were here in April were agreeable, and we said that later we would call a Conference.

MR. LAPOINTE: I knew that, and I am pleased that such a Conference was then suggested and is to be held. . . .

When the question of equality of status is being discussed another question will arise, that of appeals to the Privy Council. There are some who believe that, so long as we have an appeal to that Committee, we cannot say that we have complete equality of status. Again I say that the prevalence

of this condition is of our own free will. The mother country at the Conference of 1926, and the other Conferences as well, made it clear that, when one of the sister nations of the Empire wants to do away with that appeal, it is for her to decide. In Canada I know there is a strong body of opinion that we should retain that appeal to the Privy Council; others think differently. So far as I am concerned, without being extreme in the matter or in any way expressing a forcible view, I am of the opinion that if Canadians are competent to make their own laws they should be competent to interpret them, I think it is a reflection on the legal men of Canada and on our judiciary to say that our Supreme Court should lack the competence necessary to inspire confidence in Canadian litigants. If that is so, by all means action should be taken to improve that condition. By all means the best men should be sought and appointed to the bench. Again I say that it is merely a matter of discretion on the part of our country. I believe we can retain the right of appeal without feeling any sense of inferiority or subordination; it is rather the merit of the question I am discussing.

7. *The Hon. J. G. Latham, House of Representatives, Commonwealth of Australia, July 17, 1931*

Clause 3 of the resolution is important indeed, and appears to me to stand on an entirely different footing from the other clauses to which I have referred. This clause contains a suggested section of the proposed Statute of Westminster in the following terms:

No act of Parliament of the United Kingdom passed after the commencement of this act shall extend, or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressly declared in that act that that Dominion has requested and consented to the enactment thereof.

I intend to propose an amendment to this clause, to

omit the words 'that Dominion has requested' and to insert in lieu thereof the words 'the Parliament and Government of that Dominion have requested'. The present position is that, as the Imperial Parliament can legislate for the whole Empire, any act passed by it which, in its terms, applies to any part of a Dominion, is law there and must be administered according to its provisions, and applied by the courts in that part of the Empire. It has not been the practice for the Parliament at Westminster to legislate for the self-governing Dominions, except in accordance with the desires of those parts of the Empire. That has been generally recognized. It is now universally held that it is not for the Imperial Parliament to legislate on the many matters which are dealt with in this Parliament, though that Parliament has full power to do so. This clause of the resolution represents an effort to crystallize into a legal formula this political convention and understanding. I believe entirely in the principle which is here represented. Speaking generally, the Imperial Parliament should not legislate in relation to Australia or Australian matters at all, unless at the request of Australia; and I would not be prepared, as an Australian and a loyal member of the British Empire, to recognize that it was part of the ordinary function of the Imperial Parliament to legislate on Australian matters. But when I am asked to express that principle in a statute, I must examine carefully and precisely the wording which is suggested. I regard the relations of the self-governing parts of the Empire, *inter se*, as corresponding closely in the political world to the relations of the members of a family in the personal world. I do not want the relations of myself and my children to be determined by rules written in a book, to which each of us must refer to discover who is right and who is wrong. I do not desire such things to be made rigid by legal rules and enactments. On many

political and constitutional matters, the British Constitution, as applied not only to Great Britain but throughout the Empire, has been a success largely because it has been loose and elastic, and has left things to be determined by the common sense of statesmen as emergencies arise, instead of being decided with the precision of lawyers in the interpretation of written documents. We are now asked to make a departure from that practice, and to endeavour to express in a rigid legal formula what is perfectly well understood as a practical, political convention, a convention which causes no difficulty or trouble in working.' I should, therefore, prefer very much to leave things as they are.

MR. COLEMAN: This provision must inevitably become the subject of legal interpretation.

MR. LATHAM: Undoubtedly. I ask honourable members to follow me in an analysis of these very important words. First, it must be remembered that we are living under a Federal constitution, and that the Commonwealth and the States each has a place in a Federal system which depends upon a division of legislative powers between the Commonwealth and the States. This resolution does not affect, is not intended to affect, and certainly should not affect, the position of the States in relation to the Commonwealth or to the United Kingdom. The States have not been represented at any of the conferences from which this resolution has ultimately emerged, and they cannot be compromised or affected in any way by this legislation. I am sure that all honourable Members will accept that proposition. When we come to Clause 3 of this resolution, what is meant by saying that 'no act of Parliament of the United Kingdom passed after the commencement of this act shall extend or be deemed to extend to the Commonwealth of Australia, as part of the law of that Commonwealth unless, &c.'? The States, as I have said, are unaffected by this

legislation. They are entitled to preserve such relations as they like with the British Parliament. We do not control the relations between the States and the rest of the Empire. They have independent relations.

MR. CROUCH: That is no longer accepted.

MR. COLEMAN: It still remains a subject of conjecture.

MR. LATHAM: Let me give an example. Take, for instance, the criminal law of the Commonwealth as applied to Australia as a whole. Very little of the Australian criminal law is Federal law; practically all of it is State law. This Parliament has not the power to legislate, speaking generally, with respect to crime. Our criminal law is chiefly State legislation. Certain Imperial statutes, such as the Fugitive Offenders Act and the Jurisdiction in Territorial Waters Act, apply to the geographical area known as Australia, and are important in relation to the effective administration of State laws. This Parliament can, under its immigration power, deal with the influx of criminals, but is not able to legislate upon the subjects affected by the Fugitive Offenders Act and the Jurisdiction in Territorial Waters Act. Those matters concern the States, and any alteration of the law in relation to them does not come within the legislative powers of the Commonwealth. Therefore, we have no right to ask the Imperial Parliament to pass an act stating that it will never legislate in relation to these matters unless this Parliament, which has nothing to do with them, asks it so to do.

Clause 3 proposes that no Imperial Act shall extend to a Dominion 'unless that Dominion has requested and consented to the enactment thereof'. I have always been troubled by those words 'requested and consented'. Either word would be sufficient; why employ both? A request for certain legislation surely implies consent to it.

MR. PATERSON: But does consent necessarily imply a request?

MR. MAXWELL: The Dominion may have changed its mind after making a request.

MR. LATHAM: There can be consent independently of a prior request. A request can be made before the legislation is enacted, and if there is a difference between 'requested' and 'consented', as applied in this statute, one would expect the consent to be subsequent to the enactment. But obviously that is not intended.

MR. HUGHES: A Government may initiate legislation by request and consent to it after it has been enacted.

MR. LATHAM: One would imagine that to be the intention until one reads in Clause 3, 'unless it is expressly declared in that Act that that Dominion has requested and consented to the enactment thereof'. Therefore, both request and consent must precede enactment.

MR. MAXWELL: An Act might not be in strict accord with the request.

MR. LATHAM: I think the declaration in the Act that the Dominion concerned had requested and consented to it would be taken as conclusive evidence that a request had been made for and consent given to legislation in the terms embodied in the act.

What is meant by 'that Dominion'? Generally it means, in practice, the executive Government of the Dominion. I propose to ask the House to amend that provision by requiring that the request and consent shall be made and given by the Parliament and by the Government. We are asked to do something very remarkable.\* The proposal is that no legislation shall be enacted for a Dominion by the Imperial Parliament unless 'that Dominion' has requested and consented to it. When a request is received from the Government of a Dominion for the enactment of certain legislation, is the British

Government to go behind that request to ascertain what degree of support it commands? It appears to me that the British Government would be in a very difficult position if it were to cross-examine on a request made by a Dominion Government pursuant to this statute. I am afraid that if the Statute of Westminster, which purports to define and settle inter-governmental practice, is passed in its present form, the practice of the British Government will be to accept without examination any request from the Government of a Dominion, and to legislate accordingly. That will mean a marked change from the existing procedure. At present, there is a general understanding that the supreme legislative power of the British Parliament will not be used unless that is substantially desired by the people of the Dominion concerned. That is a loose power, to be applied according to circumstances. I say, with hesitation, but with a sense of responsibility, that in the unsettled economic and financial condition of the world at the present time, and in view of what may happen in the next few years, recourse to the supreme legislature of the British Empire may be a valuable privilege, especially having regard to the legal complications of the Australian Federal system. If, however, this statute is passed as drafted, a request by the Government<sup>1</sup> of a Dominion will be final.

MR. GREGORY: The request should come from the Parliament.

MR. LATHAM: That is my contention. The Government of the day might bona fide regard a certain matter of policy as vital to the well-being of the Commonwealth. In regard to monetary policy, for instance, widely divergent views are held by members in this chamber, whilst the Senate is directly opposed to certain Government proposals. If the statute were passed, the Government could request

<sup>1</sup> A similar point arose under Article 9 of the Locarno Pact, 1925.



the Imperial Parliament to legislate as the Government wished, and so override both the Opposition in this chamber and the Senate. I do not say that the Government would do that, but no Government should be able to do it. In extreme circumstances, there might be a strong temptation to a Government to resort to this power. Unless the statute is amended, I am afraid that the British Government will often be embarrassed, because it will practically have to legislate in accordance with every request made by the Government of a Dominion. I prefer to leave things as they are. This clause is not required, and the statute would be better without it.

MR. BRENNAN: It is perfectly obvious that we have no authority to insist upon the British Parliament passing any Act; in the last resort it must exercise its own discretion. I agree that it probably would act at the request of the executive Government of the Dominion; and I should hope so.

MR. LATHAM: Exactly. I am not prepared to entrust any Government with the power of obtaining legislation by a mere request to the British Parliament.

MR. HUGHES: We are discussing projected legislation arising out of the declaration of the equality of the status of the Mother Country and the Dominions. One thing is obvious: if a foreign Government makes a proposal to Great Britain, the British Government accepts it without question as a proposal by the nation for which the Government speaks.

MR. LATHAM: And the same rule would apply to a request from a Dominion Government if this statute were accepted in its present form. If that rule were accepted absolutely, this Government could put any legislation it liked through the Imperial Parliament. I am not prepared to accept that position.

MR. LAZZARINI: If a Government submitted a piece of legislation to this Parliament and it was

rejected, does the honourable Member contend that, under this clause, the Government could appeal to the Imperial Parliament to pass that legislation?

MR. LATHAM: Yes.

MR. LAZZARINI: That would be surrendering our right of self-government.

MR. BRENNAN: Surely the Deputy Leader of the Opposition (Mr. Latham) is under a misapprehension. The honourable Member for Werriwa (Mr. Lazzarini) suggested that a measure which had been rejected by this Parliament might be passed by the British Parliament.

MR. LATHAM: A Government that was a party to such an action would run the risk of passing out of existence. At the present time there is no possibility of that happening; but, if this statute is passed, it appears to me that the only practice that could be adopted in Great Britain would be to refuse to look behind the request of the Government of the day. As the right honourable Member for North Sydney (Mr. Hughes) has indicated, to deal with Dominions in the same way as foreign countries, and to regard the Government as representing the people, without looking behind the request, would be too dangerous and I am not prepared to accept such a proposal.

MR. BRENNAN: I think that the honourable Member for Werriwa has been left under the impression that there may be a motion of appeal to the British Parliament against a decision of this Parliament, whereas, in truth and in fact, the general scheme of this proposal is that no legislation of the British Parliament shall operate in Australia without the consent of its people.

MR. LATHAM: For the word 'Dominion' I am proposing to insert the words 'parliament and government'. The object of my amendment is that, instead of the request being from a Dominion, it should be from the Parliament and the Government of a Dominion.

There is another important matter to which I shall refer. If this clause is passed, Australia should request the inclusion of a provision identical in terms with that asked for by New Zealand.<sup>1</sup> Should this clause be accepted, there should be a method of obtaining the concurrence of a Dominion Parliament in any Imperial legislation applying to the Dominion. New Zealand has accepted these proposals, subject to the provision that the Statute of Westminster shall subsequently be placed before the Parliament of New Zealand, and shall not come into operation until it has been adopted by that Parliament. [*Further leave to continue given.*] The proposal of New Zealand to deal with this position will be found in the report of the Imperial Conference, 1930, at p. 13, and it is in these terms—

No provision of this Act shall extend to the Dominion of New Zealand as part of the law thereof unless that provision is adopted by the Parliament of that Dominion, and any Act of the said Parliament adopting any provision of this Act may provide that the adoption shall have effect either as from the commencement of this Act or as from such later date as may be specified by the adopting Act.

I have circulated an amendment that a similar provision should be included, so that the statute shall not come into operation in the Commonwealth until, and then only in so far as, this Parliament has adopted its provisions.

Let me refer to another aspect of the matter, with a view to further extending the powers of this Parliament. On looking at Clause 2, it will be seen that it is proposed that the Colonial Laws Validity Act shall no longer extend to a Dominion, as distinct from the States or provinces constituting part of a Dominion; and it is provided that the powers of the Parliament of a Dominion shall include the power to repeal or amend any Act, rule, or regulation of the

<sup>1</sup> See Keith, *Journal of Comparative Legislation*, xiii (1931), 27.

British Parliament extending to that Dominion. But there is no power, so far as I can see, conferred upon this Parliament to amend the Statute of Westminster itself, if passed, or to repeal it. If the statute is passed by the Imperial Parliament, it provides that a Dominion Parliament is to have full power to repeal or amend other Imperial legislation extending to it. This Parliament should have power, at least, to repeal the Statute of Westminster itself, so far as it relates to Australia. Otherwise, the statute, while conferring power to repeal any British legislation applying to Australia, will have the unique characteristic of being itself unrepealable.<sup>1</sup> Therefore, I propose to add to the clause the following provision:

'and the Parliament of the Commonwealth may, at any time, repeal any provision of this Act which has been adopted by the said Parliament.'

I think that we ought to have that right, although we may never desire to exercise it. Why should such a clause as this be riveted upon us indefinitely?

I suggest that there should be an addition [to Clause 4] in these terms:

'Nothing in the Statute of Westminster shall be deemed to authorize the Parliament or the Government of the Commonwealth to request or consent to the enactment of any Act by the Parliament of the United Kingdom on any matter which is within the authority of the States of Australia, not being a matter within the authority of the Parliament or the Government of the Commonwealth of Australia.'<sup>2</sup>

In other words, this Parliament should have no licence or right to invite the British Parliament to

<sup>1</sup> This argument is apparently open to doubt, but is sound. See Statute, s. 2 (2), and above, p. xxx.

<sup>2</sup> The Parliament in October 1931 requested a modification in form of the amendment; see s. 9 (2) of the Statute for the final form, which is not quite as desired by Australia.

legislate on matters which are exclusively within the State sphere. That ought to be stated plainly.

Clause 6 deals with Sections 735 and 736 of the Merchant Shipping Act, and provides that those sections shall be construed 'as though reference therein to the legislature of a British possession did not include reference to the parliament of a Dominion'. I spoke on this matter in this chamber in August last. I think that this is a desirable removal of an unnecessary limitation on our powers. Nothing is gained by the provisions in those sections. They can easily be avoided—I will not say evaded—by any draftsman of reasonable competence, as has been done in Australia, where we have enacted legislation dealing with coastal vessels which, in effect, secures to our own ships the whole of the coastal trade, although British ships appear to be treated similarly.

I approve also of the proposal with respect to Colonial Courts of Admiralty, although I regret that the opportunity was not taken to clear up the dubious and ambiguous position in Australia in relation to admiralty jurisdiction, as disclosed by the decision of the High Court in the case of *John Sharp & Sons v. The Ship Katherine Mackall* reported at 34 C.L.R. 420. All the States are exercising admiralty jurisdiction. The judges of the States have for many years heard admiralty matters; but, in view of the decision of the High Court, I doubt whether a State has any real authority in admiralty matters. It was held by the High Court that the Commonwealth is a British possession for the purposes of the Colonial Courts of Admiralty Act, and that, therefore, it may hold Colonial Courts of Admiralty; but surely it necessarily follows that the States cannot hold such courts, although they have certainly been exercising this jurisdiction for many years. Some day a serious position will arise in this connexion. As this Parliament is unable to

cure the matter by legislation, I am sorry it was not discussed at the Imperial Conference with a view to clarifying the position. . . .

Although I am opposed to the provisions of paragraph 3 of the schedule, I do not intend at the moment to move that they be deleted. I shall, however, move—

‘That the words “that Dominion has requested”, clause 3 of the schedule, be omitted with a view to insert in lieu thereof the following words “the Parliament and Government of that Dominion have requested”.’

8. *The Rt. Hon. W. Churchill, House of Commons, November 20, 1931*

The Secretary of State for Dominion Affairs congratulated himself upon this Measure, but I cannot congratulate His Majesty's Government on this occasion. They have constituted themselves the heirs, they are the representatives, of the most splendid expression of the love and loyalty of the British people for their country and for the cohesion of the Empire of which our records bear witness. They possess a greater majority than dreamland ever portrayed. This majority has been largely produced by the votes and by the heart-felt patriotism of many millions of very poor people. It is, I think, bad luck—I say it sincerely, because it is a coincidence—it is bad luck that the very first and almost the sole Measure of the Gracious Speech should happen to be the Bill which we are asked to read a Second time to-day. When all the generous sentiments in which all parties have bathed themselves during recent years have to be reduced to the language of Acts of Parliament, the result is not only pedantic, it is painful, and, to some at any rate, it will almost be repellent. Any one who likes to read the Clauses of the Bill will understand quite well the aspect that I am expressing.

I wish to divide my examination of this Measure this morning into three parts—its effect upon the Empire, its effect upon Ireland, and its potential effect upon India. Like everybody else in the late Conservative Administration, I was involved in and am responsible for the Imperial Conference declarations of 1926. In all our self-governing Dominions there have been for many years two parties on Imperial questions. One party has set the Imperial connexion at its highest; the other has set it at the minimum; and these two parties have disputed against each other in Canada, in Australia, in New Zealand, and in South Africa. The declarations of 1926 have removed this issue altogether from the arena of Dominion politics. We accepted in this Motherland the view of those who wish to state the Imperial obligation and Imperial ties at their minimum; we abandoned the whole apparatus of sovereignty and constitutional law to which our ancestors, and even the later Victorians, had attached the greatest importance. Remembering that, and remembering the atmosphere of those days, not long gone, and the spirit of those days, I cannot think that we were wrong, and I do not think that we are wrong now. I feel that we are bound, where the great self-governing Dominions of the Crown are concerned, boldly to grasp the larger hope, and to believe, in spite of anything that may be written in Acts of Parliament, that all will come right, nay, all will go better and better between Great Britain and her offspring.

I had, however, misgivings at the time, in 1926. I had misgivings that we were needlessly obliterating old, famous landmarks\* and signposts, which, although archaic, have a historic importance and value. I remember that that great statesman, the late Lord Balfour, with whom I talked this matter over very often, answered me, and to some extent reassured me, by saying, 'I do not believe in wooden

guns.' I thought that a very pregnant remark. He saw no advantage in preserving an assertion of rights and powers on which, in practice, we should not find it possible effectively to base ourselves. I still repose faith in the calm, lambent wisdom of that great man in his later years.

It follows from this acceptance, as I am bound to accept responsibility, among others, for the conclusions of 1926, that I am bound also to face the ordeal of seeing them embodied, with all the awkwardness of the process, in practical legislation. The legislation, however—and this is a question which the House is free to revolve—the legislation to fulfil the purpose may be well-conceived or it may be ill-conceived. It may easily give an untoward bias in interpretation upon many points, and that is certainly a matter which we must examine. I could, indeed, wish that it were possible to remit this Measure to a Joint Committee of both Houses of Parliament, where all the unequalled legal authority and constitutional knowledge of the House of Lords<sup>1</sup> could contribute its constructive touch to the shaping of this most important and memorable Statute.

The Attorney-General is not with us. He, I understand, presided over a committee of lawyers who actually drafted this Bill. The Attorney-General at that time, when he was drafting the Bill, was in the full flush of his ardent enthusiasm at having newly embraced the Socialist ideal. He had cast aside his Liberalism and had seen the light, and he was, perhaps, hardly in a normal condition. It may well be that, if the Attorney-General, now that he has leisure and now that he is in a different political environment and atmosphere, might easily, in reviewing his work of last year, be more fortunate in

<sup>1</sup> Lord Buckmaster, House of Lords, November 26, 1931, stressed the grave objections to statutory enactment, and Lord Sankey recognized them.



the phraseology and terms in which he expressed the purposes to which we were committed by the Conference of 1926. But, when all is said and done, I should not be prepared myself, nor would, I dare say, a good many of my friends who take an interest in these matters, to vote against the principle of this Measure in its Second Reading stage. I see that some of my hon. Friends have on the Paper a proposal to move the rejection of the Bill. I hope that they will not carry that through to its extreme conclusion, because I think it would only create a false issue in the minds of the public. If large numbers of our fellow-subjects in the Dominions like to think, and like to see it in print, that the bonds of Empire rest only upon tradition, good will and good sense, it is not our policy—except as I shall hereafter mention—it is not our policy or our interest to gainsay them.

But there I think we must call a halt. At this point we enter the region of special obligations. These special obligations, entered into between the Mother-country and the various Dominions, have been strongly affirmed by all the great self-governing Dominions of the Crown, and we see the results of their inclinations and wishes on the text of this Statute. We see them in Clauses 7 and 8. Canada, for instance, stipulates that nothing in this Act shall be deemed to apply to the repeal, amendment, or alteration of the various British North America Acts from 1867 to 1930. The Commonwealth of Australia and the Dominion of New Zealand stipulate that nothing in the Act shall be deemed to alter their constitutions under the Imperial Acts which have called them into being. They assert the inviolability, so far as they are concerned, of the Imperial Statutes upon which their houses are founded. It has not been left for us to make these claims. It is the Dominions who have made them for themselves.

But in the case of the Irish Free State there is also a special obligation which does not find its reservation within the corners of this Statute. It is a special obligation to which, I think, we are bound to pay the greatest attention. I mean, of course, the Irish Treaty of 1921, or the Articles of Agreement as it is sometimes called. I am well acquainted with this. Curiously enough, it has been my duty not only to have charge in this House of the Transvaal Constitution of 1906, which was the parent and forerunner of the Act of Union of South Africa of 1909, but also I was the Minister in charge of the Irish Free State (Agreement) Act of 1922, and it is of the Constitution in its relation to this Treaty that I wish particularly to speak.

I regard the Irish Treaty, in spite of all its terrible surroundings, as a great pact and symbol of peace between the British and Irish peoples after 700 years of reciprocal maltreatment and misunderstanding. I am one of the surviving signatories of that Treaty. I remember vividly the circumstances in which it was made. Both sides were strained to their utmost limits. Every one of us British delegates realized the measureless danger to an Imperial power of surrender to the kind of violence to which we had been subjected. The Irishmen whom we faced knew that they took their lives in their hands for their part, and nearly all of them have given their lives for the fulfilment of the Treaty obligations. I do not wish to labour details, but the names of Arthur Griffith, Michael Collins, and, though he was not a signatory of the Agreement, Kevin O'Higgins ought not to fade from our memories, because they gave their lives for the maintenance of the instrument called the Irish Treaty or the Articles of Agreement. They had pledged their faith to Englishmen whom they met for the first time, with whom they had previously warred, but of whose fidelity they were now assured, and they

marched in that faith steadfastly on their path to the end which was not delayed.

I cannot believe that such an instrument thus defended should be lightly set aside or that we should create a situation in which it should be lightly set aside. I know that we are told it will make no difference, that if it was the will of the people of Southern Ireland to repudiate their Treaty obligations, what we write in this Statute or leave unwritten would make no difference. I do not agree. The Irish Treaty constitutes the title deeds of the new Irish Free State. We never considered hypothetical contingencies, or what sanctions might be invoked in particular cases of repudiation of solemn treaties and agreements. But, if the Irish Treaty were illegally repudiated, the Irish Free State would have lost its title deeds. That certainly would happen. In the common law of Europe, in the jurisprudence of the world, the Irish Free State would have lost its foundation. It would have become a mere inexpressible anomaly. That would be a great disaster to them and a great weakening of their position in the whole world which they have so carefully endeavoured to defend and build up. Therefore, it is the interest of Nationalist Ireland, and of Sinn Fein Ireland, no less than of this House, to preserve the sanctity of that memorable Treaty between these two proud parent races from whose loins so much of the British Empire had sprung.

I am advised on high technical authority that this Bill confers upon the Irish Free State full legal power to abolish the Irish Treaty at any time when the Irish Legislature may think fit.<sup>1</sup> Doubtless we shall hear the opinion of my right hon. and learned Friend who is the surviving Law Officer of the Crown

<sup>1</sup> This contention seems to rest on a confusion between the repeal of an Act and the repudiation of a treaty; Keith, *The Times*, November 18, 1931; *The Scotsman*, June 14, 1932.

upon this question, and well I know the force and power of the legal arguments which the Law Officers, with their great erudition and commanding professional skill, are always able to assemble in support of Government policy. I cannot pit my own knowledge as a layman against such authority, but I am advised by extremely high and weighty legal luminaries that the effect of this Bill passing in its present form would be to make it perfectly legal and perfectly simple for the Imperial Act which embodied the Articles of Agreement to be repealed by the Irish Free State. The Irish Treaty rests on and is embodied in the Irish Free State Constitution Act, 1922. Clause 2 of the Statute of Westminster which the Dominion Secretary has already read, reads in terms which no one can have the slightest doubt about. No one can say it is obscure or cryptic. It is the plainest Act of Parliament that I have ever read.

No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule, or regulation in so far as the same is part of the law of the Dominion.

What can be plainer than that? It would be open under this Bill to the Dáil at any time to repudiate legally—that is the point—with the full sanction of law and Parliamentary procedure, every provision of the Articles of Agreement. They could repeal the Irish Free State Constitution Act in every respect. It would be absurd to argue that, when they had repealed the Irish Free State Constitution Act, an Imperial Act, they would be inhibited from further action by the fact that they themselves passed through the Dáil their own replica of the

Imperial Act. If the parent Act were destroyed, everything else would perish with it, and at this point we must look at the Irish Free State Constitution Act and its Schedules in which the Articles of Agreement are embodied. Any one who likes to read the Articles of Agreement will see how very important are some of their provisions.

MR. HEALY: Read Article 12.

MR. CHURCHILL: May I not choose which Article I shall read? It would be open to the Dáil, if they were so minded—and there is no reason why we should not find them so minded in the future—to repudiate the Oath of Allegiance which is embodied in Article 4 and which is the great guarantee while it stands against a great many unfortunate departures. They could certainly abolish and decide for themselves this question, which, I admit, is a delicate one, of the right of appeal to the Privy Council. It is a matter upon which both sides should be consulted, but, once the Statute of Westminster is passed in its present form, it would be open to them, without even consultation, to settle that disputed issue in their own way and on their own terms.

AN HON. MEMBER: They can do it now.

MR. THOMAS: I said that they have nullified it on several occasions up to now.

AN HON. MEMBER: Illegally.

MR. CHURCHILL: That is the whole point. We are entitled to adhere to and to press peacefully and patiently our view of those things. By this Bill in its present form we shall have placed it out of our power to continue to hold our view of the case, because we shall have provided an absolutely legal method by which the matter can be settled in an adverse sense to that which we hold. They could repudiate the right of the Imperial Government to utilize, for instance, the harbour facilities at Berehaven and Queenstown which are contained in those

Acts and other Articles of Agreement. They could repudiate the right of facilities for aviation and oil fuel storage to which great importance was attached by the country at the time this Treaty was negotiated. They could repudiate the limitation upon the size of the Army of the Irish Free State, which is now restricted to the same proportion of the Irish population as the military establishments in the United Kingdom bear to the population of the United Kingdom—a very fair and reasonable proposition, and one which still bears the test of time. I do not say that they would do so, but they would have a perfect right to do so once they had repealed the application to the Dominions of the Irish Free State (Agreement) Act of 1922. There are other various provisions with which I will not trouble the House.

We are asked by the Dominions Secretary to look at the Preamble to this Act. Some language is used in the Preamble about the Crown which, I am assured, does less than justice to the ancient constitutional doctrines which exist, but the proposal that secession from the Commonwealth of Nations should require to be, or that the questions affecting the Crown should require to be, dealt with by all the parties to the British Commonwealth of Nations, is, of course, very valuable, but it is perfectly worthless in its present form. It has absolutely no validity at all as a Preamble. The Preamble is nothing. It has no legal force. Judges, I am told, do not read the Preamble. They look at the Clauses. There is no meaning attaching to it at all. But we had a Preamble to the Parliament Act:

Whereas it is expedient without delay to set up a new and reformed Second Chamber.

Twenty years have passed. What is the use of the preamble being there? It may well be, therefore, that in the long run, perhaps in this Parliament, we

may read again that Preamble. It will at any rate show that there is no legal force in the Preamble. There are other various provisions with which I will not trouble the House, but in essence under this Act, if it is passed in its present form, the whole structure of the Irish Treaty can be destroyed, not by illegal repudiation, but by the mere passing of a law through the Irish Free State Parliament, which this Bill declares they have plenary powers to pass if they think fit. I think that that is a very wrong thing and one to which we ought not to lend ourselves, especially at the outset of a new, and what we may all hope may be, a famous Parliament.

Great anxiety has been caused in Northern Ireland by the position which will be created when this Bill is passed, and needless anxiety, because, if we mean the same thing, there is no difficulty in giving effect to the purposes of the House. Moreover, the remedy is so obvious and so simple that I am most hopeful that His Majesty's Government, with all their power, will be willing to adopt it. An Amendment will be moved in the Committee stage by my right hon. Friend the Member for Burton (Col. Gretton) which will seek to introduce into Clause 7 after the words

Nothing in this Act shall be deemed to apply to the repeal, amendment or alteration of the British North America Acts, 1867 to 1930.

the words which are incorporated in the text of the Bill—the words:

'or to the Irish Free State Constitution Act, 1922.'

I trust that His Majesty's Government will accept the Amendment in the sense that it is moved, and I hope that the Solicitor-General will be able to tell us straight away that they will do so. I must point out how strictly the Amendment conforms to the spirit and the principle of the Irish Free State

Constitution Act and the Articles of Agreement. Section 2 of the Irish Free State Treaty says, and I ask the House to notice these words:

Subject to the provisions hereinafter set out the position of the Irish Free State in relation to the Imperial Parliament and Government and otherwise shall be that of the Dominion of Canada, and the law, practice and constitutional usage, governing the relationship of the Crown or the representative of the Crown and of the Imperial Parliament to the Dominion of Canada shall govern their relationship to the Irish Free State.

Subject to the provisions set out, the relationship shall be that of the Dominion of Canada, and here in Clause 7 of the Statute of Westminster Bill, my right hon. Friend will in due course propose to safeguard the special obligations entered into between Great Britain and the Irish Free State, in the same Clause and immediately after the provisions which by the wish of the Dominion of Canada safeguard the British North America Acts from 1867 to 1930. You could not have a closer concordance either with the Irish Treaty or with the constitutional arrangements which Canada desires. His Majesty's Government are now at the beginning of what we all hope will be a prosperous and even a glorious tenure of power. They will do well not to set aside lightly the representations which are made to them in all good faith and in all good will by many who sit in their support upon these benches.

There is no violent hurry about this matter. The Government have introduced the Bill and in that way they have kept their pledge, but Parliament is in control, and no one can limit in any way the power of Parliament to deal with this Bill. As has been pointed out, some of the Dominions themselves have amended it. In other cases they have passed Resolutions. We, for the first time as a Parliament, have to go through the process of examining and studying carefully all the concrete and definite



proposals in the form of the Statute, and certainly we should not be hurried. I hope and trust that it is not intended to bring this Debate to a premature conclusion this afternoon.

9. *The Rt. Hon. Sir Thomas Inskip, House of Commons, November 20, 1931*

THE SOLICITOR-GENERAL: In rising to reply to the debate on this Bill, I almost feel that I am entitled to claim that indulgence from the House of which new Members have had such plentiful measure during the past week. I claim that indulgence, because I have not lived with this Measure as the Attorney-General and other Ministers of the Crown have. They are acquainted with it in all its aspects. At the same time, I have no doubt at all as to the view which I think the House ought to take, and I would suggest reasons why a Second Reading should necessarily be given to the Bill this afternoon. The Bill has a splendid title, and is one which, if it be passed, will be regarded as a landmark in the constitutional history of the British Empire.

The Government have no reason to complain of either the tone or the substance of the criticism passed upon this Bill. My right hon. Friend the Member for Epping (Mr. Churchill) dealt with the Bill with caution and restraint. I gladly and sincerely accept his admonition that we are dealing with a subject which deserves caution and restraint, but I think I am entitled to remind the House that caution and restraint have been shown in the long process of the evolution of this Measure. Two Imperial Conferences and one Conference of Dominion representatives have taken part in producing it.

The Bill is not a hasty draft, it is not even the production of my right hon. Friend the Attorney-General, as the right hon. Member for Epping rather suggested. If anybody chooses to look at the record

of the Imperial Conferences he will find that not only did the Imperial Conference of 1926 contemplate that Lord Balfour's formula—if I may put it that way—should be considered in its implications upon existing legislation, but the conference having prepared the legislation which they thought suitable, the next Imperial Conference of 1930, taking their form of words, made some Amendments in it, and almost every single provision of this present Bill is to be found word for word and letter for letter in the schedule to the report of the Imperial Conference of 1930. Therefore, it is not altogether fair, though I do not complain at all of the way in which my right hon. Friend put it, for anybody in the House to suppose that this is a Bill which has been produced either by the Parliamentary draftsmen or by the Attorney-General. It is the product of the mature consideration of the representatives of all the Dominions in at least two conferences, the second of which sat in 1930 and is known by the noble and dignified name which we give to it of the Imperial Conference. It does not become any of us who have, in the past, attached great weight to the deliberations of these Imperial Conferences lightly to pass by anything that the representatives of the Dominions in those Conferences have decided should be right. Indeed, it was for that reason that my right hon. Friend wisely counselled the House not to reject the Bill, and I hope that advice will be accepted.

My hon. and learned Friend the Member for Cardigan (Mr. H. Morris) inquired the reason for not leaving the constitutional position alone. He asked us why it was necessary to put into the framework of an Act of Parliament a constitutional position well known and understood. The answer I suggest is that whatever the merits of that course might be—I am not unaware of the attractiveness of that course—if the Imperial Conferences including

Dominion representatives, with our own representatives of all parties, in the two successive Conferences were of one mind, it is scarcely possible for this House to go back on that decision, as suggested, without flouting the opinions arrived at on those two occasions.

The impression has been sought to be produced in this Debate that the Dominions are now at any rate very lukewarm as to the Measure. It is quite true that the Dominions, whose constitutions are of a Federal character, have shown a good deal of anxiety as to the form and provisions of the Bill necessary to maintain existing relationship between the Federal or central government and the States. The course which has been adopted in Australia and Canada has been mentioned, but the Clauses dealing with those Dominions are the result of discussions with those most vitally concerned. In the case of Canada, Australia, and New Zealand there are Clauses preserving the Constitutions of those three great Dominions, but all those Clauses have been inserted at the request of the Dominions themselves for their own protection. So far as South Africa and the Irish Free State are concerned, those two constitutions are framed on the unitary principle, and they have legal powers for the Amendment of their Constitutions. South Africa includes in its Constitution of 1909 the entrenched Clauses for the protection of certain rights which it was thought ought to be inviolably preserved. In the case of the Irish Free State it is bound not by an Act of Parliament or by Letters Patent but by a Treaty, which has been the subject of so much discussion this afternoon, and about which I shall have something to say before I sit down.

MR. CHURCHILL: It is also bound by an Act of Parliament.

THE SOLICITOR-GENERAL: It is quite true that it is bound by an Act of Parliament, and I shall not

forget that. So far as South Africa is concerned, and the addition that was made to the Resolution requesting the Imperial Government to pass the Statute of Westminster, that addition was made for the purpose of safeguarding the position in South Africa in regard to the entrenched Clauses. I need not quote the words because they have been referred to already, but the addition to the Resolution<sup>1</sup> in the case of South Africa was arrived at in the light of a declaration of the Prime Minister, Mr. Hertzog, that there was no intention whatever of departing from, or seeking to get rid of, the entrenched Clauses. That is a declaration which the Prime Minister of South Africa and the Government of South Africa will carefully observe, and the addition to the Resolution asking this House to pass this Bill is not to be taken as any indication whatever of any lukewarmness or hesitation as to the desirability of passing the Statute of Westminster.

With regard to the other Dominions, every one of them, including the Irish Free State, has passed Addresses from both Houses, or has passed Resolutions with Parliamentary approval, requesting His Majesty's Government to submit this Measure to Parliament. I want to displace the impression, which I think has been produced, that any one of these Dominions, whatever they may have done in the course of their discussions in their Parliaments, is lukewarm or uncertain as to their attitude towards this Bill. It has not merely been advised by the Imperial Conference in grave session, but it has once more been asked for by the Dominions. If in this House, composed of Members of a party which has always attached special significance to the desire of the Dominions, their expressed wishes,

<sup>1</sup> See Keith, *Journal of Comparative Legislation*, xiii (1931), 247, 248. It made it clear that no power existed to affect the Cape native franchise or the rules as to languages except under the conditions of the South Africa Act, 1909, s. 152. See above, p. xxix.

repeated lately with emphasis, are to be disregarded, I should indeed despair of any hope of binding the Dominions to this country by seeking to obtain a common expression of their desires. We may abandon that hope once and for all if we disregard the Resolutions that have been passed by the different Parliaments of the Empire.

Having spoken of the way in which the Parliaments of the Empire have dealt with this Bill, let me now say a word, with great respect, as to the way in which this House should be asked to deal with it. We are not seeking to dragoon this House. I hope that I have, and I know that my right hon. Friend has, too much respect for our Parliamentary institutions to suppose that we should help the cause of the Empire or of Great Britain by submitting something which we demanded should be passed letter for letter without examination. I may assure the House that whatever Amendments are brought forward shall be considered upon their merits. But let me add this. It must not be supposed that the merits which will be considered will not include the consideration that, if any considerable Amendment were to be made to this Bill involving one of our great Dominions, that matter would have to be submitted to the Dominion concerned before this Bill could pass into law; and I am bound to say, speaking for myself, and I think also for my right hon. Friend the Secretary of State for the Dominions, that it would be a matter of very grave responsibility to insert any Amendment in this Bill which would go contrary to the expressed desire of any of our Dominions—I am not speaking for the moment of the Irish Free State, but of any of our Dominions overseas.

In that connexion, let me refer quite shortly to the proposal that the Irish Free State should be included by express mention. The Irish Free State and South Africa are two Dominions whose constitutions

are framed on the unitary principle. If the Treaty or the Constitution of the Irish Free State is, against her expressed wish, to be put into this Bill, a similar course will presumably have to be taken with regard to the Constitution of South Africa, and I do not know whether my right hon. Friend, who, as he has reminded us this afternoon, was so largely responsible for that Constitution, would think it was consistent with the dignity of that Dominion, which he did so much to set on its way, to put into this Bill a provision that its Constitution shall not be broken and its entrenched Clauses shall not be repealed contrary to the good faith and sense of honour that they have as much desire to observe as we.

LORD H. CECIL: Were those Clauses a treaty or agreement with the Imperial Government?

THE SOLICITOR-GENERAL: I am surprised to hear the right hon. Gentleman suggest that the Act of 1909 founding the Dominion of South Africa was not in the nature of a solemn agreement between this country and South Africa—

LORD H. CECIL: It did not confirm a treaty.

THE SOLICITOR-GENERAL: My noble Friend is too technical if he distinguishes between a treaty and an Act of Parliament. They were both pledges—

MR. MARJORIBANKS: Has not General Smuts himself introduced a Resolution safeguarding the Constitution of South Africa in exactly the same way?

THE SOLICITOR-GENERAL: What General Smuts has done, or may desire to do, is another matter. I am considering now what this House may be asked to do. The Noble Lord the Member for Oxford University (Lord H. Cecil) was suggesting, as I understood him, that the Act of 1909, constituting the South African Dominion, was in a different category from the Treaty which is the basis of the Irish Free State. I find it difficult to

distinguish in principle for my present purpose between a solemn treaty which the Irish Free State has said they intend to observe and the Act of 1909.

MR. H. MORRIS: Did not the Dominion of South Africa pass the Resolution that there should be no derogation from the entrenchment Clauses of the Act of 1909, in order to ensure the maintenance of the present position? If the Irish Free State passed a similar Resolution, would not the situation be wholly different?

THE SOLICITOR-GENERAL: When we deal with every Amendment on its merits, we shall be bound to bear in mind the implications which the insertion of a reference to a treaty under the Bill would have in reference to South Africa. I am not giving a promise to accept any particular Amendment, but I am undertaking—and I hope the House will accept it on behalf of my right hon. Friend—that, with the opportunities for consideration which, no doubt, will be given to all these important matters, every single Amendment shall be considered on its merits without any desire to compel the House to a particular course of action.

I am bound to refer to what the right hon. Gentlemen the Member for Epping said with reference to India. I cannot let it pass by, but I am bound to say I could not regard it as wholly relevant to the Bill. He deplored what he called the improvident promise held out to India of Dominion status. He deplored, not only the implication of this Statute of Westminster upon the Indian question; he deplored just as much the implication of the Balfour formula upon the Indian question. I think he said so. I only mention it in passing to show that really no one need think this Bill really is directly connected with the Indian situation. My right hon. Friend and others have dealt with the position of the Crown. It was suggested that, satisfactory as

the Preamble might be in reference to the Crown, there is no positive enactment in the body of the Measure. Has it, first of all, been observed by every one that, if the position of the Crown does require strengthening, it is immensely strengthened by the Preamble so far as it goes, because not merely will the consent of a single Dominion Parliament, or of this Parliament, be required, but for any alteration of the position of the Crown, if the Preamble does prevail, the consent of every single unit in the Empire is required? So that not only the consent of this Parliament, but the consent of every Parliament in the Empire has to be obtained if the position is to be altered.

My right hon. Friend says that is only in the Preamble and judges do not read Preambles. I take leave to say that the future of the Crown of the British Empire will not be decided by judges in courts of law, but in the hearts of the subjects of the Crown, and, having declared, as we have in the Preamble, a great constitutional principle, I should have thought that it was sufficient for us to leave that notable declaration where it is in the Preamble without taking the trouble to insert it in the body of the Bill. Perhaps my right hon. Friend will allow me to leave the point upon which I have dwelt and to proceed to the great crux of this question. Undoubtedly the crux of this discussion this afternoon has been the position of Ireland. The right hon. Gentleman the Member for Epping truly said that the Treaty is the title deed of the existence of the Irish Free State. I agree with him. There can be no suggestion of the possibility of a repeal of that treaty. I agree with him. As far as I know, there is nobody in a responsible position, either in this country or in Ireland, to-day who intends to repeal that Treaty. [HON. MEMBERS: 'Oh!'] I was very careful, as the House would observe, to say no one, as far as I know, in a responsible



position. Let me assume that the Leader of the Opposition, Mr. de Valera, whom an hon. Gentleman has mentioned, is in favour of repealing the Treaty. Whatever I know about Mr. de Valera does not lead me to think that, if he sees any objection to breaking the moral and sacred obligations involved in the Treaty, he will be deterred by the scrap of paper as he will probably regard the Imperial Act of Parliament, but, apart from that Gentleman and those who may support him, I believe I am right in saying that the Government of Ireland at the present time have never suggested by a single word that they have any desire or intention of breaking the Treaty. That is emphatically the position His Majesty's Government would expect that the Irish Free State would adopt.

My right hon. Friend and his allies this afternoon dislike legal forms. They distrust Preambles. My right hon. Friend reminds us how Lord Balfour did not like wooden guns. He himself despises paper safeguards. He anticipates, however, a breach of this Treaty, a repudiation of the moral obligations involved in the Treaty, by the Irish Government. Will paper safeguards, wooden guns, and Preambles and Sections in Acts of Parliament prevent the repudiation of these moral obligations?

MR. CHURCHILL: They will make the repudiation illegal.

HON MEMBERS: Hear, hear!

THE SOLICITOR-GENERAL: I beg leave to say that the right hon. Gentleman and those who cheered him have spoken without consideration. If the House had been able to hear the admirable speech of the hon. Member for Crewe (Mr. Somervell) they would have seen reasons for thinking that the Treaty is so deeply embedded in the constitution of the Irish Free State that there must at least be considerable doubt as to whether the illegality is as

plain as my right hon. Friend assumes. If any one would turn to the material Article, Article 50 of the Constitution, they will find that Amendments of the Constitution within the terms of the Schedule of the Treaty may be made by the responsible Houses in Ireland, but that the Treaty and the Constitution, which are irrevocably woven together, can be made the whole basis of an argument which, I seriously suggest to the House—and as the hon. Member for Crewe suggested—is not at all certain to be decided in the way the right hon. Gentleman suggested just now. But even assuming he is right for a moment that the Treaty might be repudiated after the Statute of Westminster has been passed with legality, whereas now it can only be repudiated with illegality, I want to say emphatically, that if that be so—and let the House not be deceived by anything I say—we are, of course, then dependent only upon the moral obligations involved in the maintenance of the Treaty. I do not want to run away from it at all. But I am not going to argue the legal point on the structure of Article 50. I do not want the House to run away with the idea that the question is certain to be decided as I suggest it well may be: That is to say, that the Constitution is a rigid one.

Let us face up to the question that what is going to bind the Irish Free State to maintain the Treaty is the sacred and solemn obligations involved in the Treaty. I know that my hon. and right hon. Friends behind me and in other parts of the House will say that that is not enough. All I can say is that the name of the right hon. Member for Epping appears on the Treaty of 1921, and that he and other Ministers at that time asked this House to engage in a much bigger act of faith when they passed that Treaty than we are asking the House to engage in to-day in accepting the moral obligations of the Treaty. In his own words the right hon. Gentleman

told us that this Statute of Westminster is but crossing the t's and dotting the i's of constitutional practices which are well known and recognized. Which is the greater leap in the dark, to dot the i's and cross the t's of a Constitution well known and recognized, or to trust the Irish Government in 1921 to carry out obligations into which it had entered?—a stupendous revolution in the relations of this country with a country that had been nothing but a source of anxiety within the history of every hon. Member in this House.

I assert that His Majesty's Government have no intention of condoning or excusing or permitting the repudiation or a breach of the Treaty. It is right also and it is fair to say, whatever some of my hon. Friends may say, that the Irish Free State Government have no more intention than we have of repudiating the obligations involved in that Treaty. My right hon. Friend below the Gangway paid eloquent tribute to the dead Irishmen who had given their lives for the maintenance of the solemn obligations into which they had entered in 1921. Why should we reserve all our bouquets for those who are no longer in need of them? Why should not we pay some tribute to Irishmen as loyal and determined as those who have given their lives, and who are seeking to maintain the solemn obligations involved in the settlement of 1921? This House should seek by a great act of faith to strengthen the hands of those Irishmen in maintaining the constitution in the Treaty, upon which the happy relations of this country and Ireland at present depend.

The Privy Council, it is true, is a question of great difficulty and has been the cause of some bitter and acrimonious words at various times in the Irish Free State. I have not time to develop that question at great length to-day, but let me remind the House of one or two things. The legal position is not always agreed by everybody to be exactly

what I, for one, claim it to be. I have no doubt at all, and I believe that all my hon. Friends will agree with me, that it is implicit in Article 2 of the Treaty that the right of granting special leave to appeal to the Privy Council is part of the constitution of the Irish Free State. That is not the opinion of the representatives of the Irish Free State. We differ on that point. I suggest that the right of appeal to the Privy Council is implicit in Article 2, and I believe that every constitutional lawyer in this country would say that that is the case. The Irish Free State is based upon the model of Canada. Canada in 1921 had the right of appeal to the Privy Council and so we say that the Irish Free State has the same right of appeal.

The argument of the Irish Free State is that since 1921 there have been constitutional developments in the relations between the Dominions and Great Britain, that when in 1926 the Balfour Declaration was made granting not independence but autonomy to our self-governing Dominions, this characteristically British development of granting autonomy to our self-governing Dominions resulted in the same position being given to the Irish Free State—namely, that Canada, if she pleased, can unilaterally without our concurrence get rid of the right of appeal to the Privy Council. That is not the view of His Majesty's Government,<sup>1</sup> and it is fair to say that the Attorney-General and other representatives of the Crown, and the Prime Minister, have made it plain that the right of appeal to the Privy Council is an essential part of the obligations as between this country and Ireland. If we put it into the Bill it will not dispose of the view held by the Irish Free State, and once again we come back to the question as to whether it is better that this matter should be discussed by concurrence and agreement between the two

<sup>1</sup> The British contention seems technically open to criticism.

Parliaments and Governments of two equal parties, ourselves and this Dominion, or whether we should try and force our legal view upon the Irish Free State—we may conceivably be wrong in our view, although I do not think we are—and say that we will put it into this Bill and bind the Irish Free State to the view we hold.

I must not attempt to develop that further, because there will be opportunities on Tuesday. I will only say this, that it is ten years since this House put its foot upon a road which the right hon. Member for Epping described as a narrow and difficult road—I remember his speech very well as I had the honour of hearing it—and that we must be prepared to tread that road to the end, and make a happier and more united Ireland than we had ever known. There is only one way by which that great experiment can be made to fail. Let us grow the bitter weed of suspicion and we shall make ruin of this typically British enterprise in founding a friendly Dominion out of a long hostile country. Having set our hand to the great task of making Ireland a great Dominion, let us set an example of confidence which we should like her to follow, and at the same time complete the task to which ten years ago we put our hands.

10. *The Hon. Sir Stafford Cripps, House of Commons, November 20, 1931*

We believe that the great strength of the British Empire lies in the readiness of this country to recognize the justness of the claim of the Dominions to complete freedom of self-expression within the British Commonwealth of Nations. Nothing is more fatal to good feeling and mutual respect than the continued chafing of bonds which at one time were justified but which are now no longer necessary. It is the removal of these bonds that is the chief feature of the present Bill, and we

believe that by their removal the more intangible magnetism of common loyalty and common inheritance will acquire fresh strength. May I cite a passage from the speech made by the Attorney-General of Australia when introducing the Resolutions into the Australian Parliament? He said:

To some minds it may appear as a weakening of what are commonly called the Imperial bonds, but most thoughtful men will see in the Statute of Westminster the apotheosis of colonizing genius, and the expression of that complete mutual trust and goodwill which, more than anything else, go to make the foundation and fibre of the British Commonwealth of Nations.

We believe that that sentence expresses truly and fully the real position of the peoples not only of this country but of the Dominions as well. No doubt everybody will not be agreed upon all the provisions of the Statute. Divergent views have been expressed in the Dominion legislatures, and will no doubt be expressed in this House, especially, perhaps, with regard to the position of the Irish Free State. But it is impossible in these matters to expect unanimity. Genuine fears and genuine doubts will be and have been expressed.

It has been doubted, as the right hon. Gentleman has already said, whether it is not better to leave things as they are, to allow the common sense of the British people to permit that flexibility which has characterized our Imperial relationships in the past to continue to guide our policy in the future. This state of affairs would not, in our opinion, be satisfactory. Bonds such as the Colonial Laws Validity Act still exists not only in theory but in practice. Even in quite recent times Dominion legislation has been held to be *ultra vires* because of this statute,<sup>1</sup> and the continued existence of

<sup>1</sup> Under the Statute of Westminster Dominion legislation in Canada and the other Dominions if contrary to the constitutions will still be *ultra vires*. The only vital change is as regards merchant shipping.

what is out-of-date legislation is always a danger in any country, and more particularly in Imperial matters. We believe it is far wiser to face the facts, and make the legislative provisions fit in with those facts, than to leave the law in a state which does not accord with either the desires of the people of the Empire or the stage of evolution which the Empire has reached. Universal agreement can never be reached on a matter of this complication, but for this Statute the agreement of the majority of the peoples of all the Dominions has been obtained, and we are glad to voice the agreement of those whom we represent with that majority view.

We shall welcome the time when a greater and greater degree of self-government and self-determination can be given to the remaining parts of the Empire, and to India in particular, so that this country may have a just pride in having propagated throughout the world those ideas and principles of democratic government which it has itself developed for its own internal governance, a system which has been the admiration of the world, and the development of which we should welcome in our sister nations within the Empire. That very independence which we, as a people, have so persistently claimed we now formally give to our Dominions.

But side by side with this advance along the constitutional path, this freeing of the legislative bonds, we believe that every effort should be made to encourage good feeling and good fellowship between this country and the Dominions by a recognition of their common interests and their common obligations. The very novelty of the constitutional development of the British Commonwealth of Nations is bound to bring in its train difficulties and disputes between the various component nations, and it is essential, in our view, that some machinery should be set up which will deal effectively and fairly with these disputes. The British Commonwealth of

Nations should become a great example to the world of the ease with which international difficulties and disputes should be settled. Within the Empire we have a microcosm of the whole world, and the successful development of a great unit of freely associated nations, including, at no very distant date, we hope, Asiatic, as well as European, peoples, and this should go far to demonstrate the possibility of international agreement and co-ordination for a peaceful and prosperous development of world affairs, a development essential to the future of civilization.

It is imperative that, as soon as this Bill becomes law, there should be some agreed and accepted tribunal that can solve the problems that are certain to arise as to the exact ambit of the powers of the many independent legislative bodies that will exist within the British Commonwealth. Unless such a body is in existence we shall run a serious risk of ill-feeling developing over our differences. I know that such a tribunal has been foreshadowed in paragraph 125 of the report of the 1930 Imperial Conference, but I would urge the Government to see that its constitution, whether by appointing panels of persons fit to serve, or by setting up a permanent tribunal and its jurisdiction, are defined at the earliest moment, so that it may be ready to deal with any constitutional difficulty the moment it arises and in order that there may be no delay while it is being constituted, a delay which might be a very adverse element in achieving a friendly settlement.<sup>1</sup>

In view of the fact that the right hon. Gentleman the Secretary for the Dominions is about to embark upon an extended tour of the Dominions immediately after this Bill is passed, I might

<sup>1</sup> The issue as to the Irish Treaty obligations is a clear case for reference to such a tribunal; Keith, *Journal of Comparative Legislation*, xiii (1931), 34, 249, 250; xiv (1932), 108, 109.



perhaps be permitted to impress upon him one or two matters with regard to Imperial relations which we regard as of particular importance. Having succeeded by this Bill in removing the legal bonds which might have been a potential source of friction in our relationship with the Dominions, we should now do our utmost to encourage the development of bonds of another sort based upon our common interest, by such efforts as those which are being made by the Empire Marketing Board at the present time, which depend upon good will and not upon any bargain or bond. We believe such efforts will be of the greatest value in developing our inter-Imperial interests. We believe that the Government might greatly increase the volume, of inter-Imperial trade, and good feeling between all parts of the Empire, by developing that side of its attack upon the problem.

There are two important matters which should be carefully considered. One is the question of the bulk exchange of goods which has been tried in other parts of the world, and which might succeed in the case of this country. The other question is that of inter-Imperial salesmanship through Government organization. Those matters still remain to be tackled, and they are matters which, if we had reached that state of Socialism which we believe to be necessary for the recovery of the country, might easily be undertaken. That is the existing state of affairs, and we believe that the right hon. Gentleman has agreed to try to develop our prosperity along those lines.

This new era in our Imperial relations has come largely through our realization that in the difficult days of the war the Dominions reached the full stature of manhood, and stood by us as free and independent brothers, and no longer as children under our direction and command. To-day we are facing another great crisis, and without any

compulsion or bargain we hope and believe that the freely associated members of the British Commonwealth of Nations will stand by one another, and give to one another that help and assistance which may be so vital a factor in the future prosperity of them all.

11. *Mr. Cosgrave to Mr. R. MacDonald,*  
*November 21, 1931*

I have read the report of last Friday's debate in the House of Commons on the Statute of Westminster Bill, and am greatly concerned at Mr. Thomas's concluding statement that the Government will be asked to consider the whole situation in the light of the debate. I sincerely hope that this does not indicate any possibility that your Government would take the course of accepting an Amendment relating to the Irish Free State.

I need scarcely impress upon you that the maintenance of the happy relations which now exist between our two countries is absolutely dependent upon the continued acceptance by each of us of the good faith of the other. This situation has been constantly present to our minds, and we have reiterated time and again that the Treaty is an agreement which can only be altered by consent.

I mention this particularly because there seems to be a mistaken view in some quarters that the solemnity of this instrument in our eyes could derive any additional strength from a Parliamentary law. So far from this being the case, any attempt to erect a statute of the British Parliament into a safeguard of the Treaty would have quite the opposite effect<sup>1</sup> here, and would rather tend to give rise in the minds of our people to a doubt as to the sanctity of this instrument.<sup>1</sup>

<sup>1</sup> The result of this assurance was that the House of Commons rejected by 360 votes to 50, despite the support of Mr. Churchill and Lord H. Cecil, an amendment moved by Col. Gretton, "Nothing in this Act shall be deemed to authorize the legislature of the Irish

12. *The Statute of Westminster, 1931*

An Act to give effect to certain resolutions passed by Imperial Conferences held in the years 1926 and 1930 (22 Geo. 5, c. 4) [11 Dec. 1931].

Whereas the delegates of His Majesty's Governments in the United Kingdom, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland, at Imperial Conferences holden at Westminster in the years of our Lord nineteen hundred and twenty-six and nineteen hundred and thirty did concur in making the declarations and resolutions set forth in the Reports of the said Conferences:

And whereas it is meet and proper to set out by way of preamble to this Act that, inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations,<sup>1</sup> and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom:<sup>2</sup>

Free State to repeal, amend, or alter the Irish Free State (Agreement) Act, 1922, or the Irish Free State Constitution Act, 1922, or so much of the Government of Ireland Act, 1920, as continues to be in force in Northern Ireland'. It was suggested that under the powers granted the Free State might repeal the Government of Ireland Act, 1920, and thus destroy the northern government and legislature, and might render illegal any acts done in the Free State by British officers in repressing violation of the Treaty. Lord Salisbury, in the House of Lords, November 28, 1931, accepted Mr. Cosgrave's assurance as justifying the passage unamended of the Act.

<sup>1</sup> This term, which is due to the Irish Treaty of 1921, was erroneously explained by the Solicitor-General on November 24, 1931, as denoting only the Dominions. It means the Empire regarded as a number of independent sovereignties, one of which is the United Kingdom and its dependencies. See above, pp. xlv, xlvii.

<sup>2</sup> The Government refused to enact this preamble as an operative clause.

And whereas it is in accord with the established constitutional position that no law hereafter made by the Parliament of the United Kingdom shall extend to any of the said Dominions as part of the law of that Dominion otherwise than at the request and with the consent of that Dominion:

And whereas it is necessary for the ratifying, confirming and establishing of certain of the said declarations and resolutions of the said Conferences that a law be made and enacted in due form by authority of the Parliament of the United Kingdom:

And whereas the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland have severally requested and consented to the submission of a measure to the Parliament of the United Kingdom for making such provision with regard to the matters aforesaid as is hereafter in this Act contained:

Now, therefore, be it enacted by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. In this Act the expression 'Dominion' means any of the following Dominions, that is to say, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland.

2.—(1) The Colonial Laws Validity Act, 1865, shall not apply to any law made after the commencement of this Act by the Parliament of a Dominion.

(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or

future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominion.<sup>1</sup>

3. It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.

4. No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressly declared in that Act that that Dominion<sup>2</sup> has requested, and consented to, the enactment thereof.

5. Without prejudice to the generality of the foregoing provisions of this Act, sections seven hundred and thirty-five and seven hundred and thirty-six of the Merchant Shipping Act, 1894, shall be construed as though reference therein to the Legislature of a British possession did not include reference to the Parliament of a Dominion.

6. Without prejudice to the generality of the foregoing provisions of this Act, section four of the Colonial Courts of Admiralty Act, 1890 (which requires certain laws to be reserved for the signification of His Majesty's pleasure or to contain a suspending clause), and so much of section seven of that Act as requires the approval of His Majesty in Council to any rules of Court for regulating the practice and procedure of a Colonial Court of Admiralty, shall cease to have effect in any Dominion as from the commencement of this Act.

7.—(1) Nothing in this Act shall be deemed to apply to the repeal, amendment or alteration of the

<sup>1</sup> The Act gives no power to repeal its provisions. See s. 10.

<sup>2</sup> The necessity of Parliamentary requests was negated by Dominion representatives. See *Parliamentary Debates*, colx. 279. For Australia, see s. 9 (3).

British North America Acts, 1867 to 1930, or any order, rule or regulation made thereunder.

(2) The provisions of section two of this Act shall extend to laws made by any of the Provinces of Canada and to the powers of the legislatures of such Provinces.

(3) The powers conferred by this Act upon the Parliament of Canada or upon the legislatures of the Provinces shall be restricted to the enactment of laws in relation to matters within the competence of the Parliament of Canada or of any of the legislatures of the Provinces respectively.

8. Nothing in this Act shall be deemed to confer any power to repeal or alter the Constitution or the Constitution Act of the Commonwealth of Australia or the Constitution Act of the Dominion of New Zealand otherwise than in accordance with the law existing before the commencement of this Act.

9.—(1) Nothing in this Act shall be deemed to authorize the Parliament of the Commonwealth of Australia to make laws on any matter within the authority of the States of Australia, not being a matter within the authority of the Parliament or Government of the Commonwealth of Australia.

(2) Nothing in this Act shall be deemed to require the concurrence of the Parliament or Government of the Commonwealth of Australia in any law made by the Parliament of the United Kingdom with respect to any matter within the authority of the States of Australia, not being a matter within the authority of the Parliament or Government of the Commonwealth of Australia, in any case where it would have been in accordance with the constitutional practice existing before the commencement of this Act that the Parliament of the United Kingdom should make that law without such concurrence.

(3) In the application of this Act to the Commonwealth of Australia the request and consent

referred to in section four shall mean the request and consent of the Parliament and Government of the Commonwealth.

10.—(1) None of the following sections of this Act, that is to say, sections two, three, four, five and six, shall extend to a Dominion to which this section applies as part of the law of that Dominion unless that section is adopted by the Parliament of the Dominion, and any Act of that Parliament adopting any section of this Act may provide that the adoption shall have effect either from the commencement of this Act or from such later date as is specified in the adopting Act.

(2) The Parliament of any such Dominion as aforesaid may at any time revoke the adoption of any section referred to in sub-section (1) of this section.<sup>1</sup>

(3) The Dominions to which this section applies are the Commonwealth of Australia, the Dominion of New Zealand and Newfoundland.

11. Notwithstanding anything in the Interpretation Act, 1889, the expression 'Colony' shall not, in any Act of the Parliament of the United Kingdom passed after the commencement of this Act, include a Dominion or any Province or State forming part of a Dominion.

12. This Act may be cited as the Statute of Westminster, 1931.

<sup>1</sup> This wording ensures that ss. 8 and 9 cannot be altered by the Commonwealth, being adopted to meet the desires of the States. It has been agreed by the Commonwealth that action under s. 10 shall not be taken until after consultation with the States; Mr. Scullin, Nov. 26, 1931 (*Parl. Debates*, p. 1927). Early action by New Zealand and Newfoundland is improbable. On the Act see Keith, *Journal of Comparative Legislation*, xiv (1932), 101-11.





V

THE EXTERNAL RELATIONS AND  
DEFENCE OF THE EMPIRE, 1923-31



I. THE TREATY BETWEEN CANADA AND  
THE UNITED STATES OF AMERICA FOR  
SECURING THE PRESERVATION OF THE  
HALIBUT FISHERY OF THE NORTH  
PACIFIC OCEAN

(Signed at Washington, March 2, 1923; Ratifications  
exchanged at Washington, October 21, 1924)<sup>1</sup>

HIS Majesty the King of the United Kingdom of  
Great Britain and Ireland, and of the British Do-  
minions beyond the Seas, Emperor of India, and  
the United States of America, being equally de-  
sirous of securing the preservation of the halibut  
fishery of the Northern Pacific Ocean have resolved  
to conclude a Convention for this purpose, and have  
named as their plenipotentiaries:

His Britannic Majesty: The Honourable Ernest  
Lapointe, K.C., B.A., LL.B., Minister of Marine and  
Fisheries of Canada; and

The President of the United States of America:  
Charles Evans Hughes, Secretary of State of the  
United States;

Who, after having communicated to each other  
their respective full powers, found in good and due  
form, have agreed upon the following Articles:

Article 1.

The nationals and inhabitants and the fishing  
vessels and boats of the Dominion of Canada and of  
the United States, respectively, are hereby pro-  
hibited from fishing for halibut (*Hippoglossus*) both  
in the territorial waters and in the high seas off the

<sup>1</sup> The delay was due to hesitation by the United States to ratify,  
their view being that the obligations of the Treaty should apply to  
all British subjects. But this demand was finally dropped. See  
Keith, *Responsible Government in the Dominions* (1928), ii. 897, 898.

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western coast of the Dominion of Canada and of the United States, including Behring Sea, from the 16th day of November next after the date of the exchange of ratifications of this Convention to the 15th day of the following February, both days inclusive, and within the same period yearly thereafter, provided that upon the recommendation of the International Fisheries Commission hereinafter described this close season may be modified or suspended at any time after the expiration of three such seasons, by a special agreement concluded and duly ratified by the High Contracting Parties.

It is understood that nothing contained in this Article shall prohibit the nationals or inhabitants and the fishing vessels or boats of the Dominion of Canada and of the United States, from fishing in the waters hereinbefore specified for other species of fish during the season when fishing for halibut in such waters is prohibited by this Article. Any halibut that may be taken incidentally when fishing for other fish during the season when fishing for halibut is prohibited under the provisions of this Article may be retained and used for food for the crew of the vessel by which they are taken. Any portion thereof not so used shall be landed and immediately turned over to the duly authorized officers of the Department of Marine and Fisheries of the Dominion of Canada or of the Department of Commerce of the United States. Any fish turned over to such officers in pursuance of the provisions of this Article shall be sold by them to the highest bidder and the proceeds of such sale, exclusive of the necessary expenses in connexion therewith, shall be paid by them into the treasuries of their respective countries.

#### Article 2.

Every national or inhabitant, vessel or boat of the Dominion of Canada or of the United States

engaged in halibut fishing in violation of the preceding Article may be seized except within the jurisdiction of the other party by the duly authorized officers of either High Contracting Party and detained by the officers making such seizure and delivered as soon as practicable to an authorized official of the country to which such person, vessel or boat belongs, at the nearest point to the place of seizure, or elsewhere, as may be mutually agreed upon. The authorities of the nation to which such person, vessel, or boat belongs alone shall have jurisdiction to conduct prosecutions for the violation of the provisions of the preceding Article or of the laws or regulations which either High Contracting Party may make to carry those provisions into effect, and to impose penalties for such violations; and the witnesses and proofs necessary for such prosecutions, so far as such witnesses or proofs are under the control of the other High Contracting Party, shall be furnished with all reasonable promptitude to the authorities having jurisdiction to conduct the prosecutions.

### Article 3.

The High Contracting Parties agree to appoint within two months after the exchange of ratifications of this Convention, a Commission to be known as the International Fisheries Commission, consisting of four members, two to be appointed by each party. This Commission shall continue to exist so long as this Convention shall remain in force. Each party shall pay the salaries and expenses of its own members and joint expenses incurred by the Commission shall be paid by the two High Contracting Parties in equal moieties.

The Commission shall make a thorough investigation into the life history of the Pacific halibut and such investigation shall be undertaken as soon as practicable. The Commission shall report the

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results of its investigation to the two Governments and shall make recommendations as to the regulation of the halibut fishery of the North Pacific Ocean, including the Behring Sea, which may seem to be desirable for its preservation and development.

Article 4.

The High Contracting Parties agree to enact and enforce such legislation as may be necessary to make effective the provisions of this Convention with appropriate penalties for violations thereof.

Article 5.

This Convention shall remain in force for a period of five years and thereafter until two years from the date when either of the High Contracting Parties shall give notice to the other of its desire to terminate it. It shall be ratified in accordance with the constitutional methods of the High Contracting Parties. The ratifications shall be exchanged in Washington as soon as practicable, and the Convention shall come into force on the day of the exchange of ratifications.

In faith whereof, the respective plenipotentiaries have signed the present Convention in duplicate, and have thereunto affixed their seals.

Done at the City of Washington, the second day of March, in the year of our Lord one thousand nine hundred and twenty-three.

(L.S.) ERNEST LAPOINTE.

(L.S.) CHARLES EVANS HUGHES.

## II. THE IMPERIAL CONFERENCE, 1923

### 1. *Foreign Relations*

THE discussions on foreign relations were commenced on October 5th by the Secretary of State for Foreign Affairs, who gave to the Conference a review of the general situation in every part of the world, and the most frank exposition, first, of the main problems which have confronted the Empire during the last two years, and, secondly, of those which seem most likely to arise in the near future.

The greater part of what Lord Curzon said was necessarily of a confidential character, since it was his object to supplement the written and telegraphic communications of the past two years by giving orally to the Representatives of the Dominions and India the inner history of the period, but it was thought advisable that extracts from those parts of his speech which related to subjects of immediate interest and importance, viz. the situation in connexion with the Reparations problem and the Turkish Treaty, should be published forthwith.<sup>1</sup>

This was a departure from the practice at previous Imperial Conferences, when statements made by the Foreign Secretary have been regarded as confidential throughout.

Lord Curzon's review was followed by a general discussion on foreign relations, in which Lord Robert Cecil, as British representative on the Council of the League of Nations, all the Dominion Prime Ministers present, the Vice-President of the Executive Council of the Irish Free State, and the three members of the Indian delegation, took part.<sup>2</sup>

<sup>1</sup> See Appendix III in Cmd. 1988.

<sup>2</sup> For speeches on the work of the League of Nations see Appendix IV in Cmd. 1988.

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Frequent and detailed examination was given not only to the main features of the international situation but to the different aspects of that situation as they developed from day to day. Nor did the Imperial Conference terminate its sittings until each subject had been carefully explored and a common understanding reached upon the main heads of foreign policy.

It was while the Conference was sitting that the President of the United States renewed the offer of the United States Government to take part in an international conference or inquiry to investigate the European Reparations problem, and to report upon the capacity of Germany to make the payments to which she is pledged. The Conference cordially welcomed, and decided to take immediate advantage of, this overture; and communications were at once entered into with the Allied Powers to obtain their co-operation.

The Conference, after careful consideration of the policy which has been pursued, was of the opinion that the European situation could only be lifted on to the plane of a possible settlement by the co-operation of the United States of America, and that, if the scheme of common inquiry to be followed by common action were to break down, the results would be inimical both to the peace and to the economic recovery of the world.

It felt that in such an event it would be desirable for the British Government to consider very carefully the alternative of summoning a Conference itself in order to examine the financial and the economic problem in its widest aspect.

The Conference regarded any policy which would result in breaking up the unity of the German State as inconsistent with the Treaty obligations entered into both by Germany and the Powers, and as incompatible with the future discharge by Germany of her necessary obligations. The strongest



representations on this subject were accordingly made to the Allied Governments.

The Conference considered the situation in the Near and Middle East and recorded its satisfaction at the conclusion of peace between the Allies and Turkey. An end had thus been brought to a period of acute political tension, of military anxiety, and financial strain in the eastern parts of Europe; and more particularly had great relief been given to the sentiments of the Moslem subjects of the British throne in all parts of the world.

Another of the subjects that engaged the attention of the Conference was that of Egypt. The Conference was glad to recognize the great advance that has been made during the last two years towards a pacific settlement of this complex problem, which will safeguard important communications between several parts of the Empire.

The Conference, so much of whose time had been occupied two years ago with the question of the renewal or termination of the Anglo-Japanese Alliance and with the future regulation of the Pacific, noted with satisfaction the results of the Washington Conference, which had added immensely to the security of the world without disturbing the intimate relations that have for so long existed between the Empire and its former Ally.

It recognized with satisfaction the progressive fulfilment of the obligations incurred under the Washington Treaties; it registered the confident belief that the future relations between the Governments and peoples of the British Empire and Japan will be not less sincere and cordial than when the British and Japanese Governments were bound by written conventions; and it recorded its profound sympathy with the Japanese Government and people in the terrible catastrophe which has recently befallen them.

During the session of the Conference, the question

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of the regulation of the liquor traffic off the American coasts and of the measures to be taken to avoid a serious conflict either of public opinion or of official action was seriously debated. The Conference arrived at the conclusion that, while affirming and safeguarding as a cardinal feature of British policy the principle of the three mile limit, it was yet both desirable and practicable to meet the American request for an extension of the right of search beyond this limit for the above purpose, and negotiations were at once opened with the United States Government for the conclusion of an experimental agreement with this object in view.<sup>1</sup>

Finally the Conference, after listening to a detailed exposition of the work of the League of Nations during the past two years, and more particularly of the recent sitting of the Council and the Assembly at Geneva, placed on record its emphatic approval of the action that had been taken by, and the support that had been given to, the representatives of the British Empire on the latter occasion. There was full accord that the League should be given the unabated support of all the British members of the League as a valuable instrument of international peace, and as the sole available organ for the harmonious regulation of many international affairs.

This Conference is a conference of representatives of the several Governments of the Empire; its views and conclusions on Foreign Policy, as recorded above, are necessarily subject to the action of the Governments and Parliaments of the various portions of the Empire, and it trusts that the results of its deliberations will meet with their approval.

<sup>1</sup> A general Treaty was concluded for the Empire by the British Ambassador at Washington, January 23, 1924; Keith, *Responsible Government in the Dominions* (1928), ii. 902.

## 2. *The Negotiation, Signature, and Ratification of Treaties*

The following Resolution was drawn up and agreed to:

The Conference recommends for the acceptance of the Governments of the Empire represented that the following procedure should be observed in the negotiation, signature and ratification of international agreements.

The word 'treaty' is used in the sense of an agreement which, in accordance with the normal practice of diplomacy, would take the form of a treaty between Heads of States, signed by plenipotentiaries provided with Full Powers issued by the Heads of the States, and authorizing the holders to conclude a treaty.

### I

#### 1. *Negotiation.*

(a) It is desirable that no treaty should be negotiated by any of the Governments of the Empire without due consideration of its possible effect on other parts of the Empire, or, if circumstances so demand, on the Empire as a whole.

(b) Before negotiations are opened with the intention of concluding a treaty, steps should be taken to ensure that any of the other Governments of the Empire likely to be interested are informed, so that, if any such Government considers that its interests would be affected, it may have an opportunity of expressing its views, or, when its interests are intimately involved, of participating in the negotiations.

(c) In all cases where more than one of the Governments of the Empire participates in the negotiations, there should be the fullest possible exchange of views between those Governments before and during the negotiations. In the case of treaties negotiated at International Conferences, where

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there is a British Empire Delegation, on which, in accordance with the now established practice, the Dominions and India are separately represented, such representation should also be utilized to attain this object.

(d) Steps should be taken to ensure that those Governments of the Empire whose representatives are not participating in the negotiations should, during their progress, be kept informed in regard to any points arising in which they may be interested.

### 2. *Signature.*

(a) Bilateral treaties imposing obligations on one part of the Empire only should be signed by a representative of the Government of that part.<sup>1</sup> The Full Power issued to such representative should indicate the part of the Empire in respect of which the obligations are to be undertaken, and the preamble and text of the treaty should be so worded as to make its scope clear.

(b) Where a bilateral treaty imposes obligations on more than one part of the Empire, the treaty should be signed by one or more plenipotentiaries on behalf of all the Governments concerned.

(c) As regards treaties negotiated at International Conferences, the existing practice of signature by plenipotentiaries on behalf of all the Governments of the Empire represented at the Conference should be continued, and the Full Powers should be in the form employed at Paris and Washington.

### 3. *Ratification.*

The existing practice in connexion with the ratification of treaties should be maintained.

## II

Apart from treaties made between Heads of States, it is not unusual for agreements to be made between Governments. Such agreements, which are

<sup>1</sup> This resolution approves the form of signature of the Halibut Fishery Treaty of 1923; see p. 311, *ante*.

usually of a technical or administrative character, are made in the names of the signatory governments, and signed by representatives of those Governments, who do not act under Full Powers issued by the Heads of the States: they are not ratified by the Heads of the States, though in some cases some form of acceptance or confirmation by the Governments concerned is employed. As regards agreements of this nature the existing practice should be continued, but before entering on negotiations the Governments of the Empire should consider whether the interests of any other part of the Empire may be affected, and, if so, steps should be taken to ensure that the Government of such part is informed of the proposed negotiations, in order that it may have an opportunity of expressing its views.

The Resolution was submitted to the full Conference and unanimously approved. It was thought, however, that it would be of assistance to add a short explanatory statement in connexion with part I (3), setting out the existing procedure in relation to the ratification of treaties. This procedure is as follows:

- (a) The ratification of treaties imposing obligations on one part of the Empire is effected at the instance of the Government of that part:
- (b) The ratification of treaties imposing obligations on more than one part of the Empire is effected after consultation between the Governments of those parts of the Empire concerned. It is for each Government to decide whether Parliamentary approval or legislation is required before desire for, or concurrence in, ratification is intimated by that Government.<sup>1</sup>

<sup>1</sup> For the Conference Resolutions on Defence see no. ix (2), *post*. Announcement was made of the projected Empire cruise of a modern squadron of war vessels, which proved very acceptable to the Dominions.

### III. THE NEGOTIATION, SIGNATURE, AND RATIFICATION OF THE TREATY OF LAUSANNE

*The Rt. Hon. W. L. Mackenzie King, House of  
Commons, Canada, June 9, 1924*

HON. Members have had placed before them in printed form a copy of most of the communications that have passed between the British Government and the Canadian Government with reference to the Conference and the Treaty. I had better direct the attention of the House immediately to the communication in which the Government was made aware of the holding of the Conference and the nature of the invitations which were extended to the Conference by the parties who had in hand the arrangements with reference thereto. The communication setting forth the essential facts in this regard will be found as the first in the return which has been brought down. It is dated London, October 27, 1922, and is from the Secretary of State for the Colonies, addressed to myself as Prime Minister of Canada. It is as follows:

Yesterday invitations were sent by the Governments of Great Britain, France, and Italy to the Japanese, Roumanian, Yugoslav, Greek, and Turkish Governments, both of Constantinople and Angora, to send representatives to Lausanne, November 13th, to conclude treaty to end war in the East which will replace Treaty of Sèvres. Russian Soviet Government and Bulgarian Government also being invited to send to Lausanne, at a date to be fixed, representatives to take part in discussion on question of the Straits which the Conference will undertake at a later stage. Inquiry is also being addressed by the three Governments to the United States expressing hope that they will permit United States representative to be present during Lausanne negotiations in a capacity similar to that in which United States representative was present during

negotiations at San Remo in 1920, or to take more active part in the negotiations, specially on the question of the Straits. According to arrangements agreed upon with French and Italian Governments each Government would be represented at Lausanne by two plenipotentiaries. Secretary of State for Foreign Affairs will personally act as chief British plenipotentiary and it is proposed he should be accompanied by the British High Commissioner at Constantinople. Dominion Governments will be kept informed from time to time on the general lines of policy on which British plenipotentiaries propose to proceed, and of course of negotiations, and in case of other treaties arising out of the Peace will of course be invited to sign new treaty and any separate instrument regulating the status of the Straits. His Majesty's Government trusts that this procedure will be in accordance with the wishes of your Government. Plenipotentiaries are fully acquainted with the Imperial aspect of the problem and with the keen interest taken by the Dominion Governments in its solution. Similar telegram sent to other Prime Ministers.

## DEVONSHIRE.

Hon. Members will observe that this communication begins with the words, 'Yesterday invitations were sent'—not, as has been interpreted in some of the press discussions which I have seen on the subject, 'are being sent'—which would indicate that the Governments mentioned were considering sending certain invitations and were desirous of consulting in the first instance with the Government of Canada in reference to them. Our information was of *un fait accompli*—the statement given to us was to the effect that the invitations had been sent the day before. I would ask hon. Members to notice the wording of the first sentence—'were sent by the Governments of Great Britain, France, and Italy'. The dispatch does not say that the invitations were sent on behalf of the Government of the British Empire; the meaning is clear.

—were sent by the Governments of Great Britain, France, and Italy to the Japanese, Roumanian, Yugo-

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slav, Greek, and Turkish Governments to send representatives to Lausanne on November 13, to conclude a Treaty to end the war in the Near East.

A little further on in the dispatch is the paragraph:

According to arrangements agreed upon with the French and Italian Governments, each Government will be represented at Lausanne by two plenipotentiaries.

'Each Government' refers to the Governments mentioned in the opening sentence of the dispatch, namely, the Governments of Great Britain, France, and Italy. There is no mention there of the Governments of the British Empire; in particular, there is no mention there of the Dominion of Canada, nor indeed, will there be found anywhere within the four corners of this dispatch the least intimation that in any way it was intended that the Dominion Government should be represented at this Conference by the plenipotentiaries that are named therein.

My right hon. Friend asked me early this afternoon if I intended to refer to any other communications. It is an embarrassing feature of this situation that all the correspondence cannot be placed on the Table of the House, but hon. Members will appreciate that in matters of international concern there may be communications which, while there is no reason why they should not be known to the different Governments of the same Empire, it might not be advisable to have made public as against the rest of the world.

There was, accompanying this dispatch, another communication, also of a confidential character, which had a distinct bearing upon the reply which was sent by this Government. Indeed, both communications should be read together in order to enable those who are interested properly to appreciate the full significance of the reply which the Canadian Government sent. Now, I am precluded from giving the text of the other communication to



which I have referred, but when this matter first came up in the House I sent a copy of all the correspondence to my right hon. Friend, the leader of the Opposition, so that he would be aware, being a member also of the Privy Council, of the full nature and extent of the correspondence that had passed between the two Governments, and I wish to say in his hearing that that communication gave reasons why the Government of Canada was not being invited and why representatives from this Government should not and could not be present at the Lausanne Conference. That fact, I think, should be made clear in view of the discussion that has taken place in the Old World as well as in this with respect to the stand taken by the Government of Canada. I think it should have been made clear in the British House of Commons that there had been a communication which, in so many words, gave reasons why Canada could not be represented at the Conference.

Having received this intimation, we had to consider the nature of the reply which we would send. Had we wished to create an embarrassing situation, we might possibly have taken strong exception to the manner in which this whole subject had been brought to our attention and to the course adopted, but we realized that there were many serious aspects of European politics which it was advisable for us to take into account. We were in no way anxious to add to the difficulties of the British Government in dealing with these matters; indeed, we were desirous of doing all in our power to assist in removing any sort of embarrassment, and in that spirit and wholly from that motive the following message, of date October 31, was sent by His Excellency the Governor-General, as coming from myself, in reply to the Duke of Devonshire's message:

I have the honour to acknowledge the receipt of Your Grace's dispatch of the 27th instant, informing our

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Government of the invitations to the Lausanne Conference which have been sent to the Governments of other countries by the Governments of Great Britain, France, and Italy, and setting forth the procedure in reference thereto.

Our Government has no exception to take to the course pursued by His Majesty's Government with respect to the conclusion of a Treaty to end the war in the Near East. As, however, it is proposed to keep our Government informed from time to time of the general lines of policy on which British plenipotentiaries propose to proceed, and of the course of negotiations, and to invite us to sign a new treaty and any separate instrument regulating the status of the Straits, we deem it advisable to avail ourselves of the earliest opportunity to inform His Majesty's Government that in our opinion the extent to which Canada may be held to be bound by the proceedings of the Conference or by the provisions of any treaty or other instrument arising out of the same, is necessarily a matter for the Parliament of Canada to decide and that the rights and powers of our Parliament in these particulars must not be held to be affected by implication or otherwise in virtue of the information with which our Government may be supplied.

This was signed by His Excellency, Lord Byng. I would direct the attention of the House to the use in this dispatch of the words 'a Treaty to end the war'—

Our Government has no exception to take to the course pursued by His Majesty's Government with respect to the conclusion of a Treaty to end the war in the Near East.

The intimation that had been given to us concerning the Lausanne Conference was that it was a conference for the purpose of bringing the war to an end. When this first communication was being considered by council, the question naturally arose, how did Canada come to be in the war?—was it at the instance of some action of our Governor in Council, or was war declared by His Majesty the King on the advice of his ministers in Britain? I

think the facts will disclose that His Majesty the King acted on the advice of his ministers in Britain in declaring war against Turkey. That being the case, it did not seem to us an unnatural thing that His Majesty's ministers in Great Britain should deem that they were in a position to conclude a Treaty which would end the war without feeling the necessity of insisting upon other parts of the British Empire also sending representatives to Lausanne. We therefore made it clear that we did not propose to take exception to the course which had been pursued, of arranging a conference to end the war. But, as the intimation went further than merely dealing with the question of ending the war, and indicated that there might be new obligations arising out of some new treaty, we felt it our duty at once to avail ourselves, as the dispatch says, of the earliest opportunity to tell His Majesty's Government that, with respect to new obligations that might be created, obligations of a nature other than those which merely related to the question of the ending of the war, our Parliament would wish to exercise its right to say to what extent it would be bound by those obligations—there being no representative of Canada at the Conference and there being no opportunity for real conference or consultation in connexion with its proceedings.

I think a great deal of the misunderstanding and misapprehension which has arisen in this matter has grown out of the circumstance that, when the public were first informed in the British Parliament of the attitude of the Canadian Government, they were informed in words that did not accurately represent the facts. Indeed, the Prime Minister of England, Mr. MacDonald, has given me authority to state to the House that if his words in any way conveyed the impression that Canada had been formally asked to be represented at the Conference and that we had concurred in such a course, they

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were conveying a meaning which was not in accordance with the facts.<sup>1</sup> . . .

I should like to make clear just what is in the mind of the Government in the position that we are maintaining. I referred a moment ago to a report of Sir Robert Borden, a report which I brought to the attention of all who were present at the Imperial Conference. It is the report which was made of the Conference on the Limitation of Armaments held at Washington from November 1921 to February 6, 1922, a report of the Canadian delegate including treaties and resolutions. On p. 42 of this report under the sub-heading Dominion Representation in the British Empire Delegation, Sir Robert Borden sets out very clearly and concisely the stages which he believes should be followed in negotiation of treaties of an inter-Imperial character by which the Dominion of Canada is to be bound. Broadly Sir Robert presents the matter as follows: That, as respects negotiation, the Government of Canada should be consulted before preliminary arrangements are finally concluded; that Canada should be represented by one who is duly authorized by her own Government, by one who holds full powers from His Majesty the King at the request of the Government of Canada; that the treaty to be binding should be signed in respect of Canada by such representative; and that as regards ratification it should be left to the Government to decide whether they wish to make it an executive act without reference to Parliament, or to follow the procedure which was followed in the case of the Versailles Treaty of referring the treaty to Parliament in the first instance for approval before ratification.

Our dispatch to the British Government on December 31, 1922, with reference to the signing of this Treaty is based on the position as stated by

<sup>1</sup> Mr. King then pointed out the misunderstandings in *The Times* article of April 9, 1924, 'Lausanne and Canada'.

Sir Robert Borden in his report to this Parliament, which report was accepted by this Parliament. In other words, arising out of the War, as a consequence of the doctrine of equality of status between the different parts of the Empire. Had this Government taken a course which would not have served to maintain that status, no one would have been so strong in his denunciation of its course as my right hon. Friend opposite. Assume that we had not drawn the attention of the British Government to the position that Canada had attained as a consequence of the part taken in the war, to her recognized right in the matter of the negotiation of international treaties to be consulted and represented by her own representative, and that we had then brought the Treaty into this House and asked Parliament to approve it prior to ratification. I need not tell the House how strong my right hon. Friend would have been in his denunciation of the Government, and rightly so.

We are asked why we do not bring the Treaty into the House for approval. The reason the Government have not brought the Treaty into the House for approval is that we believe that if the House were asked for its approval, that approval would not be given in view of the circumstances I have mentioned and the manner in which the proceedings were conducted. We have to take the responsibility for submitting to Parliament any treaty for approval. Equally we have to take the responsibility for refusing to submit a treaty to Parliament for approval. If my right hon. Friend thinks that we have not taken a right course in not submitting this Treaty for approval, let him bring in, at any time between now and the conclusion of this session, a resolution condemning the Government for not submitting the Lausanne Treaty and we shall debate the question, and see what the result will be. I

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think as respects treaties which bind this country in a manner which may lead to participation in future foreign wars, hon. Members will agree that there is only one way in which such treaties should be negotiated from the first stage to the last, and that Parliament will insist to see that all precautions are taken in matters that mean the assumption of such great obligations. The dispatch sets forth the line of proceeding which we think should be followed in treaties which bind different parts of the Empire, based as I say on the report of Sir Robert Borden already approved by this Parliament. The dispatch which is from His Excellency the Governor-General to His Grace the Duke of Devonshire, Secretary of State for the Colonies, reads:

Ottawa, December 31, 1922.

Following from Prime Minister for you.—

Treaty with Turkey. Your Grace's telegram of December 8 begins: 'Our message of November 16 was framed on the assumption that the Canadian Government would wish to follow the procedure adopted in the case of Treaties with Germany, Austria, and Bulgaria.'

The procedure referred to is, we understand, that adopted with respect to the Paris Peace Conference, and followed later with respect to the Washington Conference on the Limitation of Armament. As regards Canada's participation there were in that procedure four separate, distinct and essential stages.

One. Direct representation of Canada at the conferences at which the Treaties were drafted, and participation in the proceedings of the Conferences by Canada's representatives, each representative holding a Full Power signed by His Majesty the King in the form of letters patent authorizing him to sign 'for and in the name of His Majesty the King' in respect of the Dominion of Canada' any treaties, conventions, or agreements that might tend to the attainment of the object of the Conferences, the Canadian Government having by Order in Council sanctioned the issuance of these Full Powers by His Majesty.

Two. Formal signing of the Treaties on behalf of Canada by the plenipotentiaries so named.

Three. Approval by the Parliament of Canada of the Treaties thus signed on behalf of Canada.

Four. Assent of the Government of Canada to the final act of ratification by His Majesty the King of the Treaties signed on behalf of Canada and approved by the Parliament of Canada.

Your Grace is quite right in assuming that as regards treaties in which Canada is supposed to have a direct or immediate interest, the procedure here outlined is the one which our Government would wish to follow. In the case of the main political treaties concluded since the War, in general the rule seems to have been followed that, whenever the Dominions could be said to have a direct or immediate interest, the procedure was shaped to include their participation in, and signature of, the proceedings. That in the case of the Conference at Lausanne a like procedure has not been followed with respect to representation and participation by Canada, has been regarded by us as evidence that in the opinion of the countries by whom the invitations to the Conference at Lausanne were extended, Canada could not have been believed to have the direct and immediate interest which she was supposed to have in the Conferences at Versailles and Washington.

To the course pursued with respect to the Lausanne Conference, we have, as mentioned in my telegram of October 31, no exception to take. As regards procedure, however, it must be apparent that, quite apart from any action or representation on the part of the Government of Canada, a different procedure has been followed in the case of the present Conference at Lausanne than that followed at Versailles and Washington. In so far as one stage in procedure is necessarily dependent upon the stage preceding, it is difficult to see how a like procedure can be followed. Canada has not been invited to send representatives to the Lausanne Conference, and has not participated in the proceedings of the Conference either directly or indirectly. Under the circumstances, we do not see how, as respects signing on behalf of Canada, we can be expected in the case of a new treaty or of any separate instrument regarding the Straits, to follow the

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procedure adopted in the case of the Treaties with Germany, Austria, and Bulgaria.

I should like hon. Members to notice that this dispatch is dated December 31, 1922. The Treaty was signed on July 24, 1923. Fully six months before the Treaty was signed, we made it clear to the British Government that in view of the fact that we had not been invited to send representatives to the Lausanne Conference, had not participated in the proceedings of the Conference, either directly or indirectly, we did not, under the circumstances, propose to sign the Treaty. That was before the Imperial Conference was held. I think I am entitled to say that if the British Government held a different view of our obligations or were inclined to question our attitude, they should have raised that question at the Imperial Conference. Before the Imperial Conference was held, we had placed our position on record very clearly; we had intimated in dispatches that we did not intend to sign the Treaty; but no question was raised by any member of the Conference controverting that point. Similarly, as I have said, our position was made still more plain at the Conference itself. In passing I should direct the attention of the House to a dispatch of January 27, 1923, from the Secretary of State for the Colonies:

Your telegram dated December 31, Lausanne Conference. Please inform your Prime Minister that in the circumstances His Majesty's Government willing to fall in with his suggestion that any Treaties with Turkey resulting from Conference should be signed only by the British plenipotentiaries who have negotiated them, if it is generally acceptable. I am ascertaining whether it will be agreeable to the Prime Minister of the Commonwealth of Australia and the Prime Minister of New Zealand.

Hon. Members have just heard my dispatch; I leave it to the House as to whether it contained any



suggestion that the signature should be in any sense a signature other than that of the British plenipotentiary acting in accordance with the authority which he had at the time the invitations were sent out.

I hope I have made it clear that the Government in its attitude on this matter has been trying to maintain logically and consistently the position which was fought for, gained, and held by Canada's representatives at the Versailles Conference, which was followed in subsequent treaties, which was followed in the international conference that was held at Washington on the question of armaments, and which was followed in the conferences at Genoa and at The Hague. If we had departed from that procedure we should in our opinion have been justly entitled to such measure of criticism and censure as this House might have seen fit to pass upon us. We were simply seeking to maintain that equality of status which had been gained, and which we have been in the habit of asserting as between the self-governing Dominions and the Mother Country in matters of a kind that are supposed to effect us all.

MR. WOODSWORTH: If there is an equality of status, why are all these communications as between this Government and the Government of Great Britain conducted through the Secretary of State for the Colonies?

MR. MACKENZIE KING: They have to be conducted through some one, and the Secretary of State for the Colonies, who holds an historic position, has been the customary channel of communication. And happily there have been in that position on occasions gentlemen who have been particularly well acquainted with some of the outlying Dominions. I cannot see the point of my hon. Friend's remark.

MR. WOODSWORTH: If the ministers of this Government occupy the same relationship to the

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King as do the ministers of the British Government, there should be direct communication by this Government with His Majesty.<sup>1</sup>

MR. MACKENZIE KING: Well, members of the British Government in communicating with this Government do so through the Governor-General, so that it is as long as it is broad; each has to communicate through an agency. It is a matter of convenience, and no doubt as time goes on there will be changes in methods of communication, possibly more in accord with new developments. But I cannot feel that at the present time this country is in a position of subordination merely because communications go through one particular channel in the Old Land rather than through some other. However, that is a point that may be debated further on some subsequent occasion.

Now, not only is the position which this Government has taken with respect to this Treaty in accordance with precedent which we believe to have become well established, but it is also entirely in accord with the agreement which was reached at the Imperial Conference with respect to negotiation, signature, and ratification of treaties.<sup>2</sup> . . .

Now, I ask my right hon. Friend again: Does he think that Canada was represented at Lausanne? Does he think that Lord Curzon believes that Canada was represented at Lausanne?—Lord Curzon who was conducting the negotiations on behalf of Great Britain. And does he think in the light of this statement, which is a true statement of the situation, that this Government is at fault in not bringing in to the House the Treaty for formal approval, which approval, as I said a moment ago, is either a mere matter of form or carries with it vast and grave

<sup>1</sup> On this point see Mr. McGilligan's statement, p. 255, *ante*.

<sup>2</sup> Mr. King cited the rules set out pp. 319, 320, *ante*, and cited Lord Parmoor's and Lord Curzon's speeches, February 28, 1924 (Debates, pp. 428, 434), showing that Canada was not represented, but only Great Britain, at the Conference.

obligations in which both the honour and resources of this country are involved?

I think, Mr. Speaker, that some who in the Old World follow these constitutional and international questions more closely and accurately than some who write very freely on them in this country have come a little nearer to appreciating the Canadian point of view and the attitude of the Government in reference to this matter than have our own writers. Apropos of this I should like to read to the House a letter addressed to the editor of the London *Times* by Mr. A. Berriedale Keith, of the University of Edinburgh. It sets out our attitude in the clearest way. When this article was written there had been no communication whatever with Mr. Keith by any member of the Government so far as I am aware, and I might add that I do not think that at that time the correspondence had even been brought down. His article is in the form of a letter to the *Times* and appeared in the issue of April 26 of this year. Mr. Keith is a careful student of and a recognized authority on international law, and the author of several important works. He saw very clearly what was in the mind of the Canadian Government and he expressed it in these words:

Imperial Treaties—Canada and Lausanne—Attitude to Straits Convention.

Sir, It is easy to understand Mr. Mackenzie King's reluctance to ask the Canadian Parliament to approve ratification of the Treaty of Lausanne, since such action would imply the undertaking by Canada of a definite and positive responsibility to render aid in case action became necessary under the Straits Convention, and, as the controversy over Article X of the League of Nations Covenant proves, Canadian opinion is united in the view that Canada should accept no obligation to action which would fetter the decision of future Canadian Parliaments.

But the parliamentary discussions leave obscure the vital question whether Mr. King really holds that the Treaty of Lausanne, if and when ratified simpliciter, will

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be binding upon her because it was not signed by Canadian representatives acting *eo nomine* for Canada. This, of course, is the view suggested by the opinion of Mr. Doherty in 1919, when he explained to the Canadian House of Commons the doctrine of signature of treaties, and asserted that Canada could be bound only by treaties concluded in this manner. But I am unable to find any doctrine of international law on which his views could be supported, and it appears clear that, unless and until international recognition is accorded to this new doctrine, a ratification without express exclusion of Canada must bind Canada in international law as much as it binds the rest of the Empire. On this view, however, though ratification will bind Canada, it will remain open to Canada, as freely as in the past, to decide what steps she will take to assist activity in securing the observation of the Straits Convention, if the need should ever arise, and for all practical purposes this position should be satisfactory enough for Canada.

The alternative, the exclusion of Canada from ratification, would raise such grave issues that it may be assumed Mr. King does not contemplate asking for such action.

He is entirely right in that. Mr. Berriedale Keith states the position of the Government exactly when he says:

A ratification without express exclusion of Canada must bind Canada in international law, as much as it binds the rest of the Empire. On this view, however, though ratification will bind Canada, it will remain open to Canada as freely as in the past, to decide what steps she will take to assist actively in securing the observations of the Straits Convention, if the need should ever arise, and for all practical purposes this position should be satisfactory enough for Canada.

What I want to make clear, in answering the hon. Member for West Calgary (Mr. Shaw), is this: there is a distinction to be drawn between the purely legal and technical position in which this Dominion may be placed and the moral obligations which arise under treaties depending upon the manner in which

such treaties are entered into, upon the parties who are present, and the representative capacities in which they acted while negotiations were proceeding. Legally and technically Canada will be bound by the ratification of this Treaty; in other words, speaking internationally the whole British Empire in relation to the rest of the world will stand as one when this treaty is ratified. But as respects the obligations arising out of the Treaty itself, speaking now of inter-Imperial obligations this Parliament, if regard is to be had to the representations which from the outset we have made to the British Government, will in no way be bound by any obligation beyond that which Parliament of its own volition recognizes as arising out of the situation.

MR. MEIGHEN: Does the Prime Minister consider Canada as much bound by the Treaty as Great Britain?

MR. MACKENZIE KING: I certainly do not; I thought I had made that clear. I would like to know whether my right hon. Friend does?

MR. MEIGHEN: I was just observing that he was complimenting Mr. Keith on how accurately he had described Canada's position. I notice that Mr. Keith, referring to a doctrine which he regarded as possibly held by the Prime Minister, uses these words:

I am unable to find any doctrine of international law on which this view could be supported, and it appears clear that, unless and until international recognition is accorded to this new doctrine, a ratification without express exclusion of Canada must bind Canada in international law, as much as it binds the rest of the Empire.

I had thought up until now that Great Britain was part of the rest of the Empire.

MR. MACKENZIE KING: My hon. Friend's interruption is characteristic.

MR. MEIGHEN: What is the matter with it?

MR. MACKENZIE KING: I read this passage and I

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said I agreed with it; I said it represented, as it does the legal and technical point of view. It says:

Ratification without express exclusion of Canada must bind Canada in international law—

International law—

—as much as it binds the rest of the Empire.

Certainly; and the whole purport of my remarks has been to draw a distinction between the moral obligation which would rest upon this country, which was not represented at Lausanne, and the position of Great Britain which was represented by a representative carrying full powers and authority from His Majesty the King. That is the whole point in question. Let me read the paragraph following what my right hon. Friend has just read:

On this view, however, though ratification will bind Canada, it will remain open to Canada, as freely as in the past, to decide what steps she will take to assist actively in securing the observation of the Straits Convention, if the need should ever arise, and for all practical purposes this position should be satisfactory enough for Canada.

MR. MEIGHEN: Will the Prime Minister say that Great Britain has not an equal right to decide what practical steps she will take?

MR. MACKENZIE KING: Great Britain, in deciding what steps she will take, will have regard for the fact that her minister plenipotentiary was present, that he conducted the negotiations, that he signed the contract, that this was all done with the full knowledge of her Government from beginning to end; and the Government of Great Britain will naturally be expected to recognize to the full every legal and every moral obligation arising therefrom. I say in that regard the position of this country is very different, its Government not having been represented, not having been invited to be present, not having had any one present with authority to

speak in the name of Canada. That is the position I take. . . .

Before I resume my seat, let me just say one word which I would like to say as to my own attitude in regard to the future of this country in its inter-Imperial and international relations. Hon. gentlemen opposite in their press and in their speeches never lose an opportunity to misconstrue and misinterpret my position on these questions, and I should like my position to be known in the clearest and most emphatic way from one part of this Dominion to the other. As I see it, looking to the future of Canada, and having regard to the kinds of discussion that have taken place, there are at least three possible avenues of constitutional development: One leading to complete independence, another leading to annexation with the United States, another leading to a more clearly recognized nationhood within the community of nations comprising the British Empire or the British Commonwealth, by whichever term you may wish to call it. I can conceive of only one other possible alternative, and that is the Dominion reverting back into its original parts and there then being two or more separate colonies or dominions, whichever you wish to call them, within what are now the confines of the one Dominion. That possibility, I think, is not to be considered for an instant. For my own part, I believe that the future of this Dominion will be happiest and best, most prosperous, and in every way most to the good, if its development is along the line on which it has been thus far, towards a fuller recognition of national status within the community of free nations which comprise the British Empire, and it is because I hold that view, it is because I believe in it so strongly, that, in this particular matter, I have been prepared to risk whatever in the way of misunderstanding and criticism and censure might come from those who have

not had a full knowledge or appreciation of the significance of the facts. I have been taking my stand from the point of view of Canada a nation within the British Empire, not Canada a colony, not Canada in any inferior or subordinate position, but Canada a country which has gained and which merits equality of status with other Dominions and with the Mother Country in these inter-Imperial relations.

Now in regard to the manner in which that community of nationhood may be best maintained, there have been some who have thought that that end would be best served by an Imperial Parliament meeting at Westminster. Others again have thought that that end would be best served by something in the nature of an Imperial Council sitting in London and issuing decrees which would bind all parts of the Empire. There is a third view which is that that end will be best obtained by the several Dominions having full recognition given to their status of self-governing Dominions, within the full meaning of these words and in there being worked out in the best possible way as respects inter-Imperial affairs, effective means for consultation and co-operation between the Dominions and the Mother Country, as units possessing equality of status within the British Empire. Now I do not believe that an Imperial Parliament is a possible thing; I think an Imperial Council would be a thoroughly bad thing; I believe it would lead to the destruction of the British Empire, and not to the making of it. But I do believe that within the British Empire every step we take to make clearer to each other that we believe in our nationhood and realize to the full our rights of self-government, will make for that future development on safe and secure lines, and I believe, as against the rest of the world, it will make for the unity and strength of the Empire itself.

But what above all else is needed is a united



Canada, a Canada that as a nation will stand as one, recognizing its responsibilities and its duties, as well as its rights, a Canada that will have one aim and one purpose, a Canada which is united within itself and finds its unity within the unity of the British Empire as well.<sup>1</sup>

<sup>1</sup> See also 'Some Recent Developments in Canada's External Relations', Address before Toronto Board of Trade, Nov. 22, 1928, and other speeches of Mr. MacKenzie King, collected in *The Message of the Carillon*, pp. 21-3, 42-5, 52-7, 82-4, 103-14, 144-6, 151, 154.

#### IV. CONSULTATION OF THE DOMINIONS ON MATTERS OF FOREIGN POLICY AND GENERAL IMPERIAL INTEREST

##### 1. *British Prime Minister to Dominion Prime Ministers, June 23, 1924*

You will probably have seen from press reports of recent speeches of Secretary of State for the Colonies and myself in Parliament that we are concerned as to adequacy of present system of consultation with other self-governing parts of Empire on matters of foreign policy and general Imperial interest.<sup>1</sup> We fully accept principle of necessity for effective arrangements for continuous consultation in all important matters of common Imperial concern, and for such necessary concerted action, founded on consultation, as the several Governments may determine (see Resolution IX of Imperial War Conference, 1917). We also realize that action to be taken as result of consultation whether at or between Imperial Conferences must be subject to constitutional requirements of each country. But we feel, as result of our experience since taking office, that system in practice has two main deficiencies.

First, it renders immediate action extremely difficult, more especially between Conferences, on occasions when such action is imperatively needed, particularly in sphere of foreign policy.

Secondly, when matters under discussion are subjects of political controversy, economic or otherwise, conclusions reached at and between Imperial Conferences are liable to be reversed through changes of Government.

Such a state of affairs inevitably leads to ineffectiveness; it also causes disappointment, and doubts

Friction had arisen over the form of Dominion representation at the London Reparations Conference; Keith, *Responsible Government in the Dominions* (1928), II. 906.

are thrown on utility of whole Imperial Conference system.

What the remedy is, it is difficult to say. On the first point, i.e. the importance of securing, on occasion, rapid decisions, particularly on matters of foreign policy, it occurs to us that further examination of the Resolution on Negotiation, &c., of Treaties passed at last year's Imperial Conference might be worth while in order to consider how far that Resolution needs to be supplemented and interpreted, and whether principles embodied in it can usefully be extended to other matters affecting foreign relations.

On the second point, i.e. means of making Imperial Conference Resolutions, whether they relate to economic or other matters, more effective, what is wanted is, I think, as I indicated in a speech in Parliament on 18th June, 'creation of some sort of workable machinery so that the public opinion of the whole of our Commonwealth of States should influence the policy for which the Commonwealth must be responsible.'

We had in view desirability of avoiding party issues when proposing appointment of Economic Committee with a reference framed so as to exclude questions of tariff policy.

One method of bringing about result desired which was mentioned by Secretary of State in recent speech in Parliament is that Imperial Conferences in future should not be confined to representatives of parties in office for time being. When it was contemplated some years ago that a special Constitutional Conference should be held, it was proposed from more than one quarter that such a Conference should be representative of Oppositions as well as Governments. On the other hand we realize that this suggestion is open to the criticism that it would tend to hamper the frank exchange of views and unrestricted inter-communication of

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confidential information on such matters as foreign policy and defence which have become so outstanding features of recent Conferences.

Another method might be to continue representation of Governments only but to arrange for each Government to obtain from its own Parliament beforehand a general approval, within sufficiently wide limits, of the attitude to be taken up by its representatives. Whilst avoiding the criticism of the first method, this might tend to diminish flexibility of Conference procedure.

We should like your views on these suggestions, and if you should be able to make any others they would be welcome. We ourselves have quite an open mind, and are merely exploring situation.

Our own feeling is that time has hardly come either to revive idea of Constitutional Conference or to call special meeting of Imperial Conference to consider problems outlined above. But we should like these problems given preliminary examination in near future and it has occurred to us that possible method might be to have a meeting of, say, two representatives of each country concerned who have had experience of constitutional working, to consider these problems and present a report as basis for further discussion. How would you view this idea, and, if it commends itself, what time would be most convenient for a meeting? Possibly October might be suitable as this would permit of some of Dominion delegates to next Assembly of League of Nations being amongst representatives if this were desired.

Similar telegram sent to other Prime Ministers.

\* RAMSAY MACDONALD.

#### 2. *Prime Minister, Canada, August 7, 1924*

*Re preliminary meeting inter-Imperial consultation, our Government has now considered proposals set out in your telegram of 23rd June. We agree as*

to the desirability of more definite understanding on matters therein referred to. Questions are not new and very marked progress has been made in their clarification and solution particularly in recent years. Whilst finality is not possible in constantly changing situation, doubtless further steps can be taken. Difficulty is inherent in existence of several self-governing communities scattered over the globe with, in large part, different neighbours and different problems, and is increased by absence of precedent for the experiment in co-operation which members of British community of nations are working out. We believe with goodwill, which has always prevailed, it can continue to be met.

As to first of specific proposals, we agree that it would be helpful to consider possibilities of further extension of principle embodied in Resolution on negotiation, &c. of treaties. Second proposal does not appear feasible. It is undoubtedly inconvenient to have reversal of policy but this liberty must be assured so long as separate Parliaments exist and electors are to be free to have policy determined in accordance with their wishes. As a matter of fact even with change in Government there is very considerable measure of continuity of essential policy. Proposal to have all parties represented in the Imperial Conferences with a view to preventing policy agreed upon thereat being rejected by existing or future Parliaments would seem to imply setting up a new body supreme over the several Parliaments. We regard the Imperial Conference as Conference of Governments of which each is responsible to its own Parliament and ultimately to its own electorate and in no sense as Imperial Council determining the policy of the Empire as a whole. We would deem it most inadvisable to depart in any particular from this conception which is based on well-established principles of Ministerial responsibility and the supremacy of Parliament. We consider that with

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respect to all Imperial Conference resolutions or proposals each Government must accept responsibility for its attitude and the Opposition or Oppositions be free to criticize; with Parliaments and if occasion arises peoples deciding the issues.

As to approval by Parliament in advance of the attitude to be taken by our representative we feel that this could be given only where Parliament had knowledge in advance of specific questions to be considered and in the light of the then existing circumstances. We agree that even in such cases adoption of this method might tend to diminish the flexibility of Conference procedure.

We share the feeling expressed in your message that the time has hardly come either to revive the idea of constitutional Conference or to call a special meeting of the Imperial Conference to consider these problems. We would be prepared, however, to take part in the manner suggested in meeting in the near future for preliminary examination of these problems and preparation of Report as basis for further discussions provided that other parts of the Empire agree and date convenient for all can be found. Early in October would appear to us to be the most convenient time for such meeting. BYNG.<sup>1</sup>

*Note.*—Copies sent to the Commonwealth of Australia, New Zealand, the Union of South Africa, the Irish Free State, and Newfoundland by dispatch, 20th August.

<sup>1</sup> The matter was not carried further by Mr. Baldwin's Government until the Imperial Conference of 1926.

V. THE CHARACTER OF INTER-IMPERIAL  
COMPACTS: THE REGISTRATION WITH THE  
LEAGUE OF NATIONS OF THE ANGLO-IRISH  
AGREEMENT OF DECEMBER 6, 1921

1. *His Majesty's Government to League of Nations,  
November 27, 1924*

SINCE the Covenant of the League of Nations came into force, His Majesty's Government has consistently taken the view that neither it nor any conventions concluded under the auspices of the League are intended to govern relations *inter se* of various parts of the British Commonwealth. His Majesty's Government considers, therefore, that the terms of Article 18 of the Covenant<sup>1</sup> are not applicable to the Articles of Agreement of December 6, 1921.

2. *Statement by Minister for External Affairs, Irish  
Free State, December 15, 1924*

The Covenant of the League of Nations sets out the duties undertaken by every Member of the League. There are no distinctions between the Members—none has special privileges and none is exempt from the obligations set forth in the Covenant. Article 18 means that every treaty and international engagement entered into after January 1920 shall be registered. The Irish Free State as a Member of the League, as well as every other Member, is bound by this Article. As the Treaty is the basis of the Free State relations with the other members of the British Commonwealth of Nations, it was pre-eminently our duty to register. To have failed in this would have been to repudiate the Covenant, which can be done neither by the Free State nor by any other member of the League.

<sup>1</sup> See p. 26, *ante*. On the issue see Keith, *Responsible Government in the Dominions* (1928), ii. 884, 885.

3. *Irish Free State Government to League of Nations,  
December 18, 1924*

The Government of the Irish Free State cannot see that any useful purpose would be served by the initiation of a controversy as to the intention of any individual signatory to the Covenant. The obligations contained in Article 18 are, in their opinion, imposed in the most specific terms on every Member of the League, and they are unable to accept the contention that the clear and unequivocal language of that Article is susceptible of any interpretation compatible with the limitations which the British Government now seek to read into it. They accordingly dissent from the view expressed by the British Government that the terms of Article 18 are not applicable to the Treaty of December 6, 1921.



VI. THE DIPLOMATIC REPRESENTATION  
OF THE DOMINIONS AND EXERCISE OF  
THE TREATY POWER: APPOINTMENT OF  
AN IRISH FREE STATE MINISTER PLENI-  
POTENTIARY AT WASHINGTON

1. *The British Ambassador at Washington, June 24,  
1924*

SIR,

Under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, I have the honour to inform you that His Majesty's Government have come to the conclusion that it is desirable that the handling of matters at Washington exclusively relating to the Irish Free State should be confided to a Minister Plenipotentiary accredited to the United States Government. Such a Minister would be accredited by His Majesty the King to the President of the United States, and he would be furnished with credentials which would enable him to take charge of all affairs relating only to the Irish Free State. He would be the ordinary channel of communication with the United States Government on these matters.

Matters which are of Imperial concern or which affect other Dominions in the Commonwealth in Common with the Irish Free State will continue to be handled as heretofore by this Embassy.

The arrangements proposed by His Majesty's Government would not denote any departure from the principle of the diplomatic unity of the Empire. The Irish Minister would be at all times in the closest touch with His Majesty's Ambassador, and any question which may arise as to whether a matter comes within the category of those to be handled by the Irish Minister or not would be settled by consultation between them. In matters falling within his

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sphere the Irish Minister would not be subject to the control of His Majesty's Ambassador, nor would His Majesty's Ambassador be responsible for the Irish Minister's actions.

In communicating to you these proposals, which His Majesty's Government trust will promote the maintenance and development of cordial relations between the British Empire and the United States, I have been instructed to express the hope that the United States Government will concur in the appointment of an Irish Free State Minister at Washington on the footing I have indicated above. As regards questions such as the precedence to be attributed to the Irish Minister or any other points which the United States Government may desire to raise in connexion with the appointment, His Majesty's Government will await the views of the United States Government.

I have, &c.

ESME HOWARD.

2. *The Secretary of State of the United States,*  
*June 28, 1924*

Excellency,

I have the honour to acknowledge the receipt of your note of the 24th June, 1924, by which, under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, you inform me of the conclusion which His Majesty's Government has reached that it is desirable that the handling of matters at Washington exclusively relating to the Irish Free State should be confided to a Minister Plenipotentiary accredited by His Majesty the King with credentials which would enable him to take charge of all affairs relating only to the Irish Free State.

Responding to the hope which you express on behalf of your Government that the Government of the United States will concur in the appointment

of an Irish Free State Minister at Washington in conformity with the proposals of His Majesty's Government as set out in your note, I have the honour and the pleasure to inform you that the President, always happy to meet the wish of His Majesty's Government in every proper way, will be pleased to receive a duly accredited Minister Plenipotentiary of the Irish Free State on the footing you indicate.

Accept, &c.

CHARLES E. HUGHES.

## VII. THE DOMINIONS AND THE LOCARNO PACTS, 1925

1. *The Treaty of Mutual Guarantee between Germany, Belgium, France, Great Britain, and Italy. (Initialed at Locarno, October 16, 1925)*

(Translation.)

THE President of the German Reich, His Majesty the King of the Belgians, the President of the French Republic, and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, His Majesty the King of Italy;

Anxious to satisfy the desire for security and protection which animates the peoples upon whom fell the scourge of the war of 1914-18;

Taking note of the abrogation of the Treaties for the neutralization of Belgium, and conscious of the necessity of ensuring peace in the area which has so frequently been the scene of European conflicts;

Animated also with the sincere desire of giving to all the signatory Powers concerned supplementary guarantees within the framework of the Covenant of the League of Nations and the treaties in force between them;

Have determined to conclude a Treaty with these objects, and have appointed as their plenipotentiaries:<sup>1</sup>

Who, having communicated their full powers, found in good and due form, have agreed as follows:

### Article 1.

The High Contracting Parties collectively and severally guarantee, in the manner provided in the following articles, the maintenance of the terri-

<sup>1</sup> No Dominion representatives were appointed, and the sphere of action of the British delegate was not defined.

torial *status quo* resulting from the frontiers between Germany and Belgium and between Germany and France and the inviolability of the said frontiers as fixed by or in pursuance of the Treaty of Peace signed at Versailles on the 28th June, 1919, and also the observance of the stipulations of Articles 42 and 43 of the said Treaty concerning the demilitarized zone.

#### Article 2.

Germany and Belgium, and also Germany and France, mutually undertake that they will in no case attack or invade each other or resort to war against each other.

This stipulation shall not, however, apply in the case of—

1. The exercise of the right of legitimate defence, that is to say, resistance to a violation of the undertaking contained in the previous paragraph or to a flagrant breach of Articles 42 or 43 of the said Treaty of Versailles, if such breach constitutes an unprovoked act of aggression and by reason of the assembly of armed forces in the demilitarized zone immediate action is necessary.

2. Action in pursuance of Article 16 of the Covenant of the League of Nations.

3. Action as the result of a decision taken by the Assembly or by the Council of the League of Nations or in pursuance of Article 15, paragraph 7, of the Covenant of the League of Nations, provided that in this last event the action is directed against a State which was the first to attack.

#### Article 3.

In view of the undertakings entered into in Article 2 of the present Treaty, Germany and Belgium and Germany and France undertake to settle by peaceful means and in the manner laid down herein all questions of every kind which may

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arise between them and which it may not be possible to settle by the normal methods of diplomacy:

Any question with regard to which the parties are in conflict as to their respective rights shall be submitted to judicial decision, and the parties undertake to comply with such decision.

All other questions shall be submitted to a conciliation commission. If the proposals of this commission are not accepted by the two parties, the question shall be brought before the Council of the League of Nations, which will deal with it in accordance with Article 15 of the Covenant of the League.

The detailed arrangements for effecting such peaceful settlement are the subject of special agreements signed this day.

#### Article 4.

1. If one of the High Contracting Parties alleges that a violation of Article 2 of the present Treaty or a breach of Articles 42 or 43 of the Treaty of Versailles has been or is being committed, it shall bring the question at once before the Council of the League of Nations.

2. As soon as the Council of the League of Nations is satisfied that such violation or breach has been committed, it will notify its finding without delay to the Powers signatory of the present Treaty, who severally agree that in such case they will each of them come immediately to the assistance of the Power against whom the act complained of is directed.

3. In case of a flagrant violation of Article 2 of the present Treaty or of a flagrant breach of Articles 42 or 43 of the Treaty of Versailles by one of the High Contracting Parties, each of the other contracting parties hereby undertakes immediately to come to the help of the party against whom such a violation or breach has been directed as soon as the said Power has been able to satisfy itself that this viola-

tion constitutes an unprovoked act of aggression and that by reason either of the crossing of the frontier or of the outbreak of hostilities or of the assembly of armed forces in the demilitarized zone immediate action is necessary. Nevertheless, the Council of the League of Nations, which will be seized of the question in accordance with the first paragraph of this article, will issue its findings, and the High Contracting Parties undertake to act in accordance with the recommendations of the Council provided that they are concurred in by all the members other than the representatives of the parties which have engaged in hostilities.

#### Article 5.

The provisions of Article 3 of the present Treaty are placed under the guarantee of the High Contracting Parties as provided by the following stipulations:

If one of the Powers referred to in Article 3 refuses to submit a dispute to peaceful settlement or to comply with an arbitral or judicial decision and commits a violation of Article 2 of the present Treaty or a breach of Articles 42 or 43 of the Treaty of Versailles, the provisions of Article 4 shall apply.

Where one of the Powers referred to in Article 3 without committing a violation of Article 2 of the present Treaty or a breach of Articles 42 or 43 of the Treaty of Versailles, refuses to submit a dispute to peaceful settlement or to comply with an arbitral or judicial decision, the other party shall bring the matter before the Council of the League of Nations, and the Council shall propose what steps shall be taken; the High Contracting Parties shall comply with these proposals.

#### Article 6.

The provisions of the present Treaty do not affect the rights and obligations of the High Contracting

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Parties under the Treaty of Versailles or under arrangements supplementary thereto, including the agreements signed in London on the 30th August, 1924.

Article 7.

The present Treaty, which is designed to ensure the maintenance of peace, and is in conformity with the Covenant of the League of Nations, shall not be interpreted as restricting the duty of the League to take whatever action may be deemed wise and effectual to safeguard the peace of the world.

Article 8.

The present Treaty shall be registered at the League of Nations in accordance with the Covenant of the League. It shall remain in force until the Council, acting on a request of one or other of the High Contracting Parties notified to the other signatory Powers three months in advance, and voting at least by a two-thirds' majority, decides that the League of Nations ensures sufficient protection to the High Contracting Parties; the Treaty shall cease to have effect on the expiration of a period of one year from such decision.

Article 9.

The present Treaty shall impose no obligation upon any of the British Dominions, or upon India, unless the Government<sup>1</sup> of such Dominion, or of India, signifies its acceptance thereof.

Article 10.

The present Treaty shall be ratified and the ratifications shall be deposited at Geneva in the archives of the League of Nations as soon as possible.

<sup>1</sup> In the tripartite agreement of 1919 between the United Kingdom, France, and the United States the Parliaments of the Dominions were the authority, but the inclusion of India explains the divergence. See p. xxiv, *ante*, and p. 366, *post*.



It shall enter into force as soon as all the ratifications have been deposited and Germany has become a member of the League of Nations.

The present Treaty, done in a single copy, will be deposited in the archives of the League of Nations, and the Secretary-General will be requested to transmit certified copies to each of the High Contracting Parties.

In faith whereof the above-mentioned plenipotentiaries have signed the present Treaty.

Done at Locarno, the 16th October, 1925.

LUTHER.

STRESEMANN.

EMILE VANDERVELDE.

A. BRIAND.

AUSTEN CHAMBERLAIN.

BENITO MUSSOLINI.

2. *The Rt. Hon. A. Chamberlain, House of Commons,*  
*November 18, 1925*

With those preliminaries, I come more immediately to the documents themselves and to the proceedings of the Conference. We were dealing with Germany, and I think every friend of the League and every friend of international peace and goodwill will rejoice that the German Government have seen their way to propose entrance to the League of Nations. There were two questions which presented considerable difficulty to us in the course of the Conference. One was this very question of the entrance of Germany into the League. The other was the relations created by past Treaties between France and Poland and their reactions on the new Treaties which we were endeavouring to carry through. I must confess that I was taken completely by surprise when I found that by far the most serious of those difficulties was constituted by our condition, or our request, that Germany should

enter the League. The question of the reaction of the French Treaties and of the relations of France with Poland and Czecho-Slovakia was found on examination to be far less difficult than any of us had supposed, and I must say that some injustice was done to Poland and to the distinguished representative of Poland in that Conference, because whenever there was thought to be a hitch in our proceedings, the press representatives, whom we could not inform from hour to hour of all that was passing among us, perhaps not unnaturally, assumed that Poland must be the obstacle in our path. It was not so. The greatest obstacle was the entrance of Germany into the League. How that was resolved appears from the letter, printed on p. 57 of the White Paper, and which it is proposed that the other Governments represented at the Locarno Conference should address to the German Government on the day of the signature of the Treaty.

I came to the conclusion that the German objections were due to apprehensions which were very largely misapprehensions of what the obligations of a member of the League were, and of what would be the policy of the League in given events. All of us who initialed that letter felt that in the declaration which we made to the German Government we were saying no more than what has been declared by the Assembly in resolution after resolution and no more than what is the common sense of the document which we had to interpret. No member can enter the League except with the same rights and the same obligations as every other member. I pause for a moment—perhaps it is hardly necessary—to say that there is a single possible exception afforded to Switzerland, because, I think, it is the seat of the League and for no other reason. But the very foundation is that all nations in it are equal, be they big nations or be they little nations, that

they have the same rights, and that, consequently, they have the same duties; and it was impossible to create a new class of membership with restricted rights and restricted duties, or, alternatively, with full rights and with restricted duties. But the duties of a nation must be proportionate to the capacity of the nation to fulfil them, and no one can anticipate that the Council would ask of any a service which it is materially incapable of rendering. We have, therefore, I submit to the House, said nothing which in any way weakens the authority or the position of the League. We have carefully explained that we have no authority to speak on behalf of the League, but we have given as our own an interpretation of the obligations of membership of the League which, I think, will be accepted in every quarter.

If I turn to the actual Treaty of Locarno, that Treaty of Mutual Guarantee which is the only Treaty that His Majesty's Government propose to sign, I would make first about it three observations. In the first place, it is a Treaty which is aimed at nobody, pointed at no one, threatening no one and menacing no one. In the second place, it is a Treaty of Mutual Guarantee. The obligations of France to Germany are the same as the obligations of Germany to France; the same is true of Belgium and Germany; and the obligations of the guaranteeing Powers, Italy and Great Britain, are the same to Germany as they are to France or as they are to Belgium. This is not, then, a Treaty directed by one group of Powers against any Power or group of Powers, but is a Mutual Treaty of Guarantee among the Powers concerned to preserve peace on their frontiers and between themselves. The third point that I would ask the House to observe is that all the agreements initialed at Locarno conform strictly to the spirit of the Covenant and the spirit of the League of Nations, that they are placed under the guardianship of the League, that the League is the

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ultimate authority in regard to the issues which may be raised, and that what we have done is not to subtract from the power or the authority of the League, but to support and to underpin that authority and power for the settlement and reconciliation of conflicts between nations.

I need only run very briefly through the Articles of the Treaty. Article 1 is a guarantee by all the contracting parties of the inviolability of the Western frontiers and the maintenance of the territorial *status quo*. By Article 2, France and Germany, and similarly Belgium and Germany, undertake not to invade or make war except in special cases. The first case is self-defence, that is, where one of the parties has already broken one of the obligations which it has undertaken; and the second is where a flagrant breach of Treaty obligations has taken place, where such breach constitutes an unprovoked act of aggression, and by reason of the assembly of armed force in the demilitarized zone immediate action is necessary. That is, again, a case of self-defence. The third case is action in pursuance of the Covenant and the decision of the Council or the Assembly of the League. Article 3 provides for arbitration and conciliation, and the details are filled in by the Conventions regarding arbitration which were also initialed at Locarno.

Article 4 is the one which most immediately concerns us, because it embodies our guarantee. Article 5 is the guarantee of the Arbitration Conventions. Article 6 protects the Treaty rights of the Powers. Article 7 makes clear that these Treaties are not an infringement of the authority or power of the League, but are supplementary to it and in support of it. Article 8 fixes its duration. Article 9 deals with the position of the Dominions and India, to which I shall return later, and Article 10 deals with the entry of Germany into the League. What the House will want to know is, what is the obligation

that we undertake? There is no case in which we can be called upon to take military action except in pursuance of the Covenant and the action of the League, or where action is taken by one of the parties in breach of its obligations which leads to such an immediate danger that you cannot wait even the few days that may be necessary for a meeting of the Council. In that case, the British Government of the day remains the judge, and the only judge, of whether that case of immediate danger has arisen. I say the British Government is the only judge. Of course, the Italian Government, as joint guarantor, is in exactly the same position as ourselves. Each guarantor is judge of whether the circumstances have arisen which bring its guarantee into immediate play.

MR. RAMSAY MACDONALD: Each guarantor separately to assess its own responsibility, or the guarantors jointly to meet to assess joint responsibility?

MR. CHAMBERLAIN: I have no doubt that as a matter of practice the two guarantors would at once exchange views upon the situation. Indeed, I think it is probable that the powers which are guaranteed will be anxious to know what views the guarantors take of the situation before they themselves take action. Though, undoubtedly, the Italian Government and our own would in such circumstances exchange views, the decision rests in each case with the particular Government. It is not a joint decision of the guaranteeing Powers. It is the British Government as far as we are concerned that must be satisfied that the situation contemplated has arisen.

What is that situation? It is—it will be found on p. 11—

In case of a flagrant violation of Article 2 of the present Treaty or of a flagrant breach of Articles 42 or 43 of the Treaty of Versailles—

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those are the Articles which regulate the demilitarized zone—

by one of the High Contracting Parties, each of the other contracting parties hereby undertakes immediately to come to the help of the party against whom such a violation or breach has been directed as soon as the said Power has been able to satisfy itself—

that is our discretion; we must be able to satisfy ourselves—

that this violation constitutes an unprovoked act of aggression, and that by reason either of the crossing of the frontier or of the outbreak of hostilities or of the assembly of armed forces in the demilitarized zone, immediate action is necessary.

I do not need to remind the House that, under Article 44 of the Treaty of Versailles, the signatory Powers are entitled to consider any breach of any provision of Articles 42 and 43 as a hostile act by Germany against each of them. Any one of these hostile acts might have led to war. Now, we provide that immediate war follows only if the act is of such a character that delay becomes dangerous to the innocent party and might be fatal to his safety.

You cannot argue that the French or we should sit still while the demilitarization of the demilitarized zone is rendered ineffective, and that we should take no action in our self-defence until German troops have actually crossed the French frontier. That would be to destroy the whole value of the demilitarized zone. On the other hand, it would be a monstrous crime against humanity that some trifling infringement, or even some serious infringement, of these same demilitarization Treaties which do not immediately endanger peace should be the cause of the immediate outbreak of war. Suppose a siding is constructed for military purposes. That is an infringement of the Treaty. Suppose a fortress is erected. That is an infringement of the Treaty. But these things cannot be done in a day. The fact

that some workmen are at work here or there is not a cause for war. These are cases which should go through the process of judicial decision or conciliation provided in the Treaty. It is only in cases where any delay endangers the security of any innocent party that we contemplate action before the decision of the Council has been given, and even then we provide that the Council shall still be seized of the matter and that when it has given its decision we will all conform to it.

I do not think that the obligations of this country could be more narrowly circumscribed to the conditions under which we have an actual vital national interest than they are in this Treaty of Locarno, and I do not think that without that amount of responsibility undertaken by Great Britain any one could have achieved that *détente* in the international situation which has already taken place in consequence of the conference of Locarno. I should have felt that the work of Locarno was only half done if it had not produced also a *détente* on the eastern frontier of Germany and contributed to render secure peace in that part of Europe. Recent events must have taught us all that if war breaks out anywhere no man can say where the conflagration will be arrested, and we cannot be indifferent to the prospects of peace in any part of the world, least of all in any part of Europe, in which we are so interested. But more. We took obligations when we joined the League of Nations. We become in greater or less degree participants in any conflict which breaks out, and it is, therefore, doubly our interest to see that the danger of war is removed as far as possible from every quarter of the world, and, above all, from every quarter of Europe in which the danger of war may arise.

The treaties signed between Poland and Germany and Czecho-Slovakia and Germany, naturally, could not be exactly the same as those which were signed

by the western nations. Great Britain was unprepared to accept any new obligations in that part of the world, but I am thankful that by their free agreement and by the goodwill which their representatives brought to the discussion of their special problems, the security of the eastern frontiers of Germany and of the neighbouring States has come out of Locarno not weakened but strengthened, and the danger of war has been rendered much more remote there, just as it has been rendered much more remote in the western half of the Continent of Europe.

M. Briand, in his final word to the Conference at Locarno, made in reply to the statement by Herr Stresemann on behalf of the German Delegation, observed that if the signing or initialing of the Treaty at Locarno was to have been the end, as it was the beginning, of Locarno, and nothing more was done, he would have thought it an act of bad faith to have come and he would never have come. I do not say that those treaties when ratified make war impossible. It is not given to any human instrument to do that, but I do say that they render war infinitely more difficult and they make it far less possible that war should break out on some obscure or doubtful incident or claim, and with those agreements in operation I think that it will be difficult for one of the nations signatory to them to make war against one of its fellow nations without clearly putting itself in the wrong before the whole civilized world, and bearing the odium of such wrong-doing.

After all, half the conflicts between nations spring out of some petty incident that is not worth the loss of a soldier's life, but where the honour or the pride or the national sentiment of two countries becomes engaged and neither deems it possible to yield. I do not believe that such incidents can create war among the parties who have signed these Treaties, and if these incidents which kindle the



flames of war cannot be wholly removed by written instruments at least it is true to say that the spirit which brought us to Locarno, and which inspired us there, has found immediate results in the policies of the Governments concerned, and that there is good hope to-day that we have turned over a new leaf, that we have put the war spirit behind us, and that we shall work with a common will to preserve peace.

Look at what has happened. At the moment when we met at Locarno thousands of German inhabitants of Poland were under an order of expulsion not in pursuance, or at any rate directly in pursuance, of rights drawn from the Treaty of Versailles, but under an agreement come to between the Polish and the German Governments for dealing with their nationals who opted to retain their nationality. I never heard any question in Locarno as to the right of the Polish Government to expel those men, but hardly had their Foreign Minister gone back from Locarno, carrying the Treaty with him, to the capital of his own country than the Polish Government decided to suspend the decree of expulsion against all these men, and the German Government, on its side, decided to suspend the decree of expulsion against the Polish nationals in Germany. And on our side, although it has taken a little longer, the fruits are also apparent. The settlement of the outstanding question about disarmament has been facilitated, at least, by the goodwill engendered by Locarno. But more than that. The new spirit of confidence of the Treaties of Locarno enables us to say that we will no longer wait for the execution of all that has to be done but that on the 1st December, the day on which these Treaties are signed, the evacuation of Cologne shall begin, and it shall be carried through with all the expedition that the material circumstances of the case permit.

The whole administration of the remaining

portion of the occupied Rhineland has been under review with a view to changing its character. When we stood—the Western nations and Germany—at arms length, menacing, threatening, things were necessary which become meaningless the moment that there is confidence and goodwill between our respective nations. We shall now welcome what we have had in view for some years past, the presence of a Reichs Commissar to discuss matters with us, and the whole administration will be reviewed with a view to reducing our interference with German life and German administration to the narrowest limits compatible with the safety of the troops that remain. I believe that a great work of peace has been done. I believe it above all because of the spirit in which it was done and the spirit which it has engendered. It could not have been done unless all the Governments, and I will add all the nations, had felt the need to start a new and better chapter of international relations, but it could not have been done unless this country was prepared to take her share in guaranteeing the settlements so come to.

I regret, nobody more so, that the circumstances of the British Empire made it impossible for all parts of the British Empire to be present throughout all our discussions, and to conduct these international negotiations from day to day in common. It was the desire of His Majesty's Government, before ever they embarked on this policy, to get into conference with the Governments of the Dominions and of India. That was not found possible. All that we have been able to do is to keep those Governments fully informed of everything that has been done from first to last. Their liberty and freedom of action are safeguarded specially under the Treaty. It is recognized that only their own Government, acting with the authority of their own Parliament, can undertake for them the obligations that we are asking the House of Commons to under-

take for Great Britain, but we hope that we may discuss this matter fully whenever the next Imperial Conference is set up, and that that Imperial Conference may not be too long delayed. I do not think that it is possible to treat matters of this great consequence, covering so wide a field by dispatch or cable across thousands of miles of ocean. For a true appreciation of the position, personal contract and personal explanation are necessary. It is for this reason that His Majesty's Government will submit to the Dominions that the best way to proceed is that we shall confer together whenever they and we are able to arrange a future meeting.

Meantime we who live close to the Continent, we, who cannot dissociate ourselves from what passes there, whose safety, whose peace, and the security of whose shores are manifestly bound up with the peace and security of the Continent, and, above all, of the Western nations, must make our decision, and we ask the House to approve the ratification of the Treaty of Locarno in the belief that by that Treaty we are averting danger from our own country and from Europe, that we are safeguarding peace and that we are laying the foundations of reconciliation and friendship with the enemies of a few years ago.

3. *The Rt. Hon. D. Lloyd George, House of Commons,  
November 18, 1925*

Now I come to a point raised by my right hon. Friend where I really feel I must press a criticism for the first time, and it is with regard to the consultation of the Dominions. I think the failure to consult the Dominions, to bring them into consultation, is a serious error which may have grave consequences. There was a great change in the whole treatment of foreign politics by the Empire as the result of the War. It was expressed very well by a Canadian statesman the other day when he said, 'Before the War the method of dealing with foreign

politics in the Empire was by a policy of trusteeship'. What does that mean? That Great Britain was the trustee of the Empire as far as foreign policy was concerned; the business was left to Great Britain, and the rest of the Empire accepted the action of the trustee. It was the policy of trusteeship. The Dominions said, during the War, 'We have sent a million of our sons to fight your battles; it is for a policy we have never been consulted about, but we are going to support you; we cannot do otherwise. But we must in future be consulted about all questions of foreign policy that might entangle you with other nations and precipitate the British Empire into war.' We said, 'That is fair.' We accepted that position. Thenceforth there was not trusteeship, but partnership. It was quite a new policy. We definitely agreed that upon all questions of foreign policy—certainly those involving any new departure, not interpretations left to the Foreign Office, but over great Treaties—the Dominions should be fully consulted.

The Foreign Secretary has said very fairly, 'You cannot conduct consultations by cable.' But my right hon. Friend the leader of the Labour party has pointed out that there has been plenty of time for a fuller consultation than that. This offer came from Germany in February. There have been seven or eight months during which the Dominions could have been consulted. Every great Treaty up to Lausanne, as my right hon. Friend pointed out, was negotiated upon the basis of full consultation with the British Empire delegation. There was a British delegation in Paris, and there was not a Clause in the Treaty of Versailles about which they were not consulted—not one. The same thing applies to all the other negotiations. They were present at Genoa. The first departure, and it is a very, very grave departure, from that policy was over the Treaty of Lausanne. I am very sorry that the right hon.

Gentleman the Secretary of State for Foreign Affairs, with his great traditions in this matter, should have followed that most perilous precedent. It is very dangerous. May I point out what the effect of it is? A very remarkable speech on this very point was delivered the other day by General Smuts. It appeared in *The Times*, and as it states the case so powerfully, and, I think, so fairly, I will, if the House will permit me, read what he says:

He regretted that the Empire had not acted with a united front in negotiating and signing the Pact, and doubted whether all the Dominions were likely to adhere to the Pact *ex post facto*. This case was going to be a precedent for the future. The tendency would be for the British Empire delegation to disappear from the field of diplomacy.

Well, it has disappeared, since Lausanne.

MR. MACDONALD: They were at Geneva.

MR. LLOYD GEORGE: Oh, yes. I beg pardon. At Geneva they were there, because they were in the League of Nations. I was referring rather to Lausanne.

MR. MACDONALD: And London.<sup>1</sup>

MR. LLOYD GEORGE: And London as well. I am very glad to hear that. That emphasizes the thing all the more. General Smuts' speech goes on:

More and more the foreign policy of the British Empire would become simply that of Great Britain. The day might come when the Dominions might feel that they had little in common with such a policy and would begin their own foreign policies in their own interest. There were natural and inevitable centrifugal tendencies at work in the Empire, and he feared that Locarno had given some impetus to them. A fear was sometimes expressed, which he did not share, that the League of Nations must inevitably weaken the links of Empire. Incidents like Locarno were far more likely than the League to sow seeds of dissension and derision.

<sup>1</sup> At the Conference of 1924 on Reparations the Dominions received representation on the panel system; Keith, *Responsible Government in the Dominions* (1928), ii. 906.

Then he goes on to say:

The Empire was a priceless blessing, and was to-day, with American abstention from the League, the main force supporting the advance of great human causes and ideals in the world. The maintenance of solidarity and a united front were, therefore, essential.

That is a very remarkable criticism upon the position, and I have seen a letter from a very prominent Conservative, who was certainly also a great Imperialist, who regarded this with profound dismay—the failure to consult the Dominions, which is quite inexplicable. I believe the Dominions would probably have come in. It is just the sort of policy that might conceivably appeal to them. If South Africa takes this view, if Canada takes this view, it will make it very difficult for Australia to take a different view on the subject; and I am very much afraid that the effect of it will be to shake the very fabric and solidarity of the Empire.

It has been a break in our diplomatic unity. I thought one of the achievements of the War was that it had unified the Empire, had brought the Dominions into the orbit, as it were, of our foreign policy, and that we should have the advantage of knowing that whatever happened to us in the future would be as a result of a policy they were just as much responsible for as we were. I am not going to predict that if we were in trouble the Dominions would desert us. I do not believe it. But they might not come in with the same alacrity if it was over something they had not been consulted about, and, as my right hon. Friend knows very well, they might not come in with the same unanimity and unity, and that makes all the difference. I deeply regret that this consultation was not possible, especially as it was in the negotiation of a Treaty which I heartily approve of, which I rejoice in. It is a great misfortune that there should be just this one thing that has marred the triumph, and has

introduced a new element of peril to the Empire at a time when we are undertaking liabilities and responsibilities which are full of peril themselves.

I have only one word to say in conclusion. The Prime Minister, in referring to the Treaty of Locarno the other day, used a word which I hope he did not fully mean. He told us it was the 'culmination' of post-war effort to obtain stability and security. If it is the culmination it is a cul-de-sac, and a trap. Its value is that it is a step, and not a goal.

THE PRIME MINISTER (MR. BALDWIN): Would my right hon. Friend allow me to explain? I understood the word 'culmination', I think, rather in the sense of being a peak, on which we take our stand and intend to remain.

MR. LLOYD GEORGE: To remain? Oh, no, it is a peak from which the right hon. Gentleman has got to leap on to another. I do not know whether my right hon. Friend has any experience in climbing mountains. If he has, he knows very well that as you go up you say, 'That is the top,' and when you get there you find there is another peak further on. That is the kind of peak that I hope he regards this as—a place from where he can see something beyond to climb up to. If this be really regarded as the end, and as something to rest on, I think it is a folly, a mistake, a peril. You have got to carry it further than that. After all, there are the Balkans. We know well what that means. [*Laughter.*] I do not know what there is to laugh at. After all, the Balkans are the earthquake region of Europe. The earth's crust is thinner there than it is anywhere else. That is where the tidal wave of blood came from in the last War. Until something like Locarno, something that will introduce the principles of Locarno, are brought into play in the Balkans, so that it is impossible for force to be used in those disputes, and you can compel them to refer disputes to some sort of arbitration, Europe will be full of peril.

## VIII. THE COMMITTEE OF IMPERIAL DEFENCE, 1926

*Viscount Haldane, House of Lords, June 16, 1926*

MY LORDS, it is not often that one rises from the Opposition Benches, as I find myself rising at this moment, in such complete agreement with a speech that has been made expository of the policy of the Government. And the reason is not that I am indisposed to criticize the policy of the Government when an opportunity affords itself, within legitimate limits, but that the noble Earl [Lord Balfour] has come to his conclusion by a path which seems to me the only right path. I shall have criticisms to make on the present arrangements of the Committee of Imperial Defence before I sit down, but they will be of a minor character. The noble Earl was the founder of that Committee. He not only founded it, but he lived with it. He has presided over it and worked with it for a longer period than anybody alive. Not only that, but he has seen it grow. The Committee of Imperial Defence is definitely a body with an unwritten constitution. No Statute has imposed on it a rigid framework. It has been able to change and adapt itself from time to time and it has changed and adapted itself very much even in the period of my own observation. The noble Earl has worked with it and watched over it and to-day, for example, he has given us at least two new developments which he has announced.

The first is the proposal that the Chiefs of Staff—who already met under the constitution of the Committee as recommended by Lord Salisbury's Report and in Lord Salisbury's time when he was Chairman of the Committee of Imperial Defence—should, by the Prime Minister's Warrant, have imposed upon them the duty of consulting not merely from the point of view of their own Department but



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of the common defence of the Empire. I think that they tried to do that latterly, but it was a duty that grew on them and it was unfamiliar. Now that it is looked upon as part of their formal duty there will be a stimulus to that part of the unwritten constitution.

The other part of the announcement to which I attach great importance is the announcement that there is to be an Imperial War College for the training of the super-staffs, the higher elements of the staffs in the three Services, which should consider the principles of strategy from a larger point of view than has been possible in any of the colleges of the Services up till now. To me that is of very great importance. Every nation has its methods of defence of a different order from those of any other nation. Our methods of defence, our methods of making war, are primarily on the sea. On the sea our Fleet has to do two things, to command the sea in time of war and to protect our trade. The second is sometimes a little overlooked, but it is a matter of vast importance, involving vast study and a great deal of technical knowledge. Our Fleet can only carry out its duties in co-operation with an Army, an Expeditionary Force which is so called because it is an expeditionary force. Being professional it can be mobilized at a moment's notice and sent off in ships to protect the outlying parts of the Empire. Then there is the Air Force which is becoming more and more a necessity to the other Services.

The principles of strategy are just what they were in the time of Hannibal, but, though they are the same principles, the modifications of their application are infinite and it requires a highly trained military mind to bring those principles into modern life and to apply them in the way they should be applied. I thought for a long time that we wanted a super-staff college to bring a common

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outlook into the minds of the three Services. The announcement of the noble Earl is therefore very welcome.

It is not over those things, however, that I wish to pause. The noble Earl has had a longer experience of the Committee of Imperial Defence than any other living person, but I rather think I come next to him in that respect. I first became connected with it in 1905 and I was very closely connected. I looked after it for a good while. Then Sir Henry Campbell-Bannerman and Lord Oxford and Asquith began to take a more active part in its deliberations and continued to do so, but I was always as busy as I could be there and, except for an interval of two or three years I remained closely connected with it even when I occupied the Woolsack. Of late, by the desire of the Government, who have graciously wished it, I have been brought closely in touch, not of course with its political side, but with the technical Committees of which, as has been said, there are thirty, some of them dealing with very technical matters indeed. I have knowledge of them from inside as well as outside. Like the noble Marquess I was Chairman of the Committee during the last Government. My noble and learned friend Lord Cave very kindly took over the bulk of my judicial work and I used to spend two or three hours a day regularly at Whitehall Gardens with the Committee of Imperial Defence.

I watched it developing itself and expanding itself and by degrees I came to very clear conclusions, which are substantially the same as those of the noble Earl. I think it is impossible to work this unwritten organization, this developing organization, by putting it under a Minister of Defence. There is one reason against it which has not been mentioned. Like the noble Earl it has fallen to me to negotiate with the Dominions over Imperial Defence. The Dominions like the Committee of

Imperial Defence because, at any rate in the case of the Army, the General Staff is now Imperial and in the case of the Navy the Naval Staff is in the closest connexion with the Dominions, and so is the Air Staff. Consequently it became most natural that the Committee of Imperial Defence should be really an Imperial Committee; that is, a Committee containing in itself representatives of the Dominions.

But at first the Dominions were a little suspicious of it on two grounds. First, they feared lest it should have executive authority and, secondly, they feared lest it should somehow put them under British Ministers. By the constitution of the Committee of Imperial Defence, which is purely advisory and which is under nobody except the Prime Minister, the Dominions have their fears obviated, and it is possible for their staff representatives freely to take part in its deliberations when they are summoned to it. There is a great advantage to them in an organization for the Empire which is a unity, and for that reason alone I should be very averse from putting it under a British Minister about whom there would at once be questions put in the Dominions such as: 'Why should he not come from the Dominions?' That is one thing, and the other thing is that it is really unnecessary.

The noble Earl [Lord Balfour] has said that the functions of the Committee were advisory. I agree with him that they are advisory. I go further than my noble friend Lord Thomson who, in an admirable speech in which he described the working of the Committee and the advantages of its working with great sympathy, still thought, though he did not want a Minister of Defence, that the Defence Committee should be more under the Cabinet. I am afraid I have not that faith. It is very seldom that any question of executive action arises. When there is full knowledge the problems are generally

eliminated and are reduced to something very simple. I agree with my noble friend and with other people in thinking that executive action should be taken by the Government of the day, by which I mean the Cabinet, and I think the Cabinet is the only body entitled to take executive action. But my purpose in having a Committee of Imperial Defence is to reduce the necessity for making decisions about executive action within as narrow limits as possible. There will be occasions for executive action, but they are infinitely different from asking the Cabinet to decide on a multitude of technical matters about which it knows nothing.

Take, for example, two cases that come into my mind as I stand here, and I have no doubt that the noble Earl has many more in his mind. There is a question of the relationships between the Air Force and the Navy over the question of who should control carriers. I am not going into technical details, but I can say that it took me weeks and months of very hard work and all the diplomacy I could summon up to enable me to get them to come together. They did at last come together, but only after a great deal of such peaceable talk as I think only a civilian could have administered. Again, when we come to other questions which arise, the work of the Minister who goes in there is essentially the work of conciliation. He is not there to impose his views. He is there for the purpose of getting them to realize that they do not know as much as they think they know and to go into the case a little more closely. My experience is that soldiers and sailors and Air Marshals do that when you ask them in the right way, but to put them under the supreme authority of some body is to take the wrong way.

In my experience of six and a half years at the War Office, which is as long, I think, as anybody has had, I found that the only true way of getting economy was to ask the soldiers themselves to make

economy. I found from bitter experience that they were the only people who could. They were the only people who controlled the vast staffs under them and it was those vast staffs under them who were responsible for waste. When you have the soldiers really on your own side then they become extraordinarily good at making economies, particularly if it is a question of economy in each other's Departments.

It is true that the Committee of Imperial Defence is essentially a body for getting knowledge and getting knowledge in a concrete form. Very often you require science, and high science, to get at the truth. You may require mathematicians, physicists, chemists, physiologists, and what impresses me so much is that the heads of the staffs and the technical people on the staff are getting to know so much that they are becoming almost as scientific as the scientific people themselves. That bears out what the noble Lord has said that war is becoming more and more a scientific matter and the more scientific we make our people the better.

What I suggest is a defect in the Committee of Imperial Defence as it stands at present is that the position of Chairman has not, as I understand, been filled up. I do not doubt that the Prime Minister has done admirable work in connexion with it, but it is too much for any one man to do the work of Prime Minister and of President of the Committee of Imperial Defence without some assistance of a Ministerial kind. I know it is a very delicate thing to get such assistance. Such a man must be a very self-effacing person, not a person who will assert his will unduly or often, but a person who is interested in details and capable of following the questions which arise with keen interest. It is not very easy to find such a person even in a large Cabinet. Still, I think the matter is worth considering, and I therefore put it forward for consideration. The truth is

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the Prime Minister, as President of the Committee of Imperial Defence, is rather like what a Minister of Defence would be. There is too much for one but not enough for two. I do not see how these functions can ever be adequately discharged unless the Prime Minister has a deputy and unless the organization has got somebody who will take this kind of interest in it.

For the rest I am satisfied, as far as an outsider can be satisfied, that the Committee of Imperial Defence is going very well at the present time. It has not attained to its full fruition. It is a body with an unwritten constitution which is developing both its constitution and its activities. That is the beauty of having an unwritten constitution. Therefore I am most reluctant to assent to any of these abstract propositions about it of which we hear so much. We have heard of economies being possible if all the Services were under one Minister. I have had experience of being Minister of War, and I can say that the work is quite enough for one man. As to one Minister being able to do the work of the Army, the Navy, and the Air Force I entirely agree with the noble Earl that it is beyond human power to do it. If any human being attempted it he would do it very badly.

Each Service had its own distinctive spirit. There is the spirit of the Navy and a quite different spirit of the Army, and the spirit of the Air Force is different from both. They must produce their own spirit and their own staff officers in their own way, and the utmost that can be done is to get staff officers of sufficiently wise minds to meet together and work together. That is the opportunity which the Committee of Imperial Defence affords, and I should be extremely sorry to take that opportunity away. For that reason, although I sympathize with my noble friend Lord Thomson in his desire to effect yet further improvement, I cannot go with

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him in thinking that the Cabinet should be brought into the business any more than it is at the present time. I think that the Prime Minister, with the assistance I have suggested, is the most fitting person to preside over the Committee of Imperial Defence.

## IX. THE IMPERIAL CONFERENCE, 1926

### 1. *The Report of the Inter-Imperial Relations Committee*

#### (a) *The Procedure in Relation to Treaties.*

WE appointed a special Sub-Committee under the Chairmanship of the Minister of Justice of Canada (The Honourable E. Lapointe, K.C.) to consider the question of treaty procedure.

The Sub-Committee, on whose report the following paragraphs are based, found that the resolution of the Conference of 1923 embodied on most points useful rules for the guidance of the Governments. As they became more thoroughly understood and established, they would prove effective in practice.

Some phases of treaty procedure were examined however in greater detail in the light of experience in order to consider to what extent the Resolution of 1923 might with advantage be supplemented.

*Negotiation.* It was agreed in 1923 that any of the Governments of the Empire contemplating the negotiation of a treaty should give due consideration to its possible effect upon other Governments and should take steps to inform Governments likely to be interested of its intention.

This rule should be understood as applying to any negotiations which any Government intends to conduct, so as to leave it to the other Governments to say whether they are likely to be interested.

When a Government has received information of the intention of any other Government to conduct negotiations, it is incumbent upon it to indicate its attitude with reasonable promptitude. So long as the initiating Government receives no adverse comments and so long as its policy involves no active obligations on the part of the other Governments, it may proceed on the assumption that its policy is generally acceptable. It must, however,



before taking any steps which might involve the other Governments in any active obligations, obtain their definite assent.

Where by the nature of the treaty it is desirable that it should be ratified on behalf of all the Governments of the Empire, the initiating Government may assume that a Government which has had full opportunity of indicating its attitude and has made no adverse comments will concur in the ratification of the treaty. In the case of a Government that prefers not to concur in the ratification of a treaty unless it has been signed by a plenipotentiary authorized to act on its behalf, it will advise the appointment of a plenipotentiary so to act.

*Form of Treaty.* Some treaties began with a list of the contracting countries and not with a list of Heads of States. In the case of treaties negotiated under the auspices of the League of Nations, adherence to the wording of the Annex to the Covenant for the purpose of describing the contracting party has led to the use in the preamble of the term 'British Empire' with an enumeration of the Dominions and India if parties to the Convention but without any mention of Great Britain and Northern Ireland and the Colonies and Protectorates. These are only included by virtue of their being covered by the term 'British Empire'. This practice, while suggesting that the Dominions and India are not on a footing of equality with Great Britain as participants in the treaties in question, tends to obscurity and misunderstanding and is generally unsatisfactory.

As a means of overcoming this difficulty it is recommended that all treaties (other than agreements between Governments) whether negotiated under the auspices of the League or not should be made in the name of Heads of States, and, if the treaty is signed on behalf of any or all of the Governments of the Empire, the treaty should be made in

the name of the King as the symbol of the special relationship between the different parts of the Empire. The British units on behalf of which the treaty is signed should be grouped together in the following order: Great Britain and Northern Ireland and all parts of the British Empire which are not separate members of the League, Canada, Australia, New Zealand, South Africa, Irish Free State, India. <sup>2</sup> A specimen form of treaty as recommended is attached as an appendix to the Committee's Report.<sup>1</sup>

In the case of a treaty applying to only one part of the Empire it should be stated to be made by the King on behalf of that part.

The making of the treaty in the name of the King as the symbol of the special relationship between the different parts of the Empire will render superfluous the inclusion of any provision that its terms must not be regarded as regulating *inter se* the rights and obligations of the various territories on behalf of which it has been signed in the name of the King. In this connexion it must be borne in mind that the question was discussed at the Arms Traffic Conference in 1925, and that the Legal Committee of that Conference laid it down that the principle to which the foregoing sentence gives expression underlies all international conventions.<sup>3</sup>

In the case of some international agreements the Governments of different parts of the Empire may be willing to apply between themselves some of the provisions as an administrative measure. In this case they should state the extent to which and the terms on which such provisions are to apply. Where international agreements are to be applied between different parts of the Empire, the form of a treaty between Heads of States should be avoided.

<sup>1</sup> Not reprinted. But see p. 408, *post*, for the present system of formal recognition of the Dominions, which is as resolved in 1926.

<sup>2</sup> This is an indirect rejection of the Irish Free State view, p. 347, *ante*.

*Full Powers.* The plenipotentiaries for the various British units should have Full Powers, issued in each case by the King on the advice of the Government concerned, indicating and corresponding to the part of the Empire for which they are to sign.<sup>1</sup> It will frequently be found convenient, particularly where there are some parts of the Empire on which it is not contemplated that active obligations will be imposed, but where the position of the British subjects belonging to these parts will be affected for such Government to advise the issue of Full Powers on their behalf to the plenipotentiary appointed to act on behalf of the Government or Governments mainly concerned. In other cases provision might be made for accession by other parts of the Empire at a later date.

*Signature.* In the cases where the names of countries are appended to the signatures in a treaty, the different parts of the Empire should be designated in the same manner as is proposed in regard to the list of plenipotentiaries in the preamble to the treaty. The signatures of the plenipotentiaries of the various parts of the Empire should be grouped together in the same order as is proposed above.

The signature of a treaty on behalf of a part of the Empire should cover territories for which a mandate has been given to that part of the Empire, unless the contrary is stated at the time of the signature.

*Coming into Force of Multilateral Treaties.* In general, treaties contain a ratification clause and a provision that the treaty will come into force on the deposit of a certain number of ratifications. The question has sometimes arisen in connexion with treaties negotiated under the auspices of the League whether, for the purpose of making up the number of ratifications necessary to bring the treaty into

<sup>1</sup> See a specimen in no. xii (2), *post*.

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force, ratifications on behalf of different parts of the Empire which are separate Members of the League should be counted as separate ratifications. In order to avoid any difficulty in future, it is recommended that, when it is thought necessary that a treaty should contain a clause of this character, it should take the form of a provision that the treaty should come into force when it has been ratified on behalf of so many separate Members of the League.

We think that some convenient opportunity should be taken of explaining to the other Members of the League the changes which it is desired to make in the form of treaties and the reasons for which they are desired. We would also recommend that the various Governments of the Empire should make it an instruction to their representatives at International Conferences to be held in future that they should use their best endeavours to secure that effect is given to the recommendations contained in the foregoing paragraphs.

##### *(b) Representation at International Conferences.*

We also studied, in the light of the Resolution of the Imperial Conference of 1923 to which reference has already been made, the question of the representation of the different parts of the Empire at International Conferences. The conclusions which we reached may be summarized as follows:

1. No difficulty arises as regards representation at conferences convened by, or under the auspices of, the League of Nations. In the case of such conferences all members of the League are invited, and if they attend are represented separately by separate delegations. Co-operation is ensured by the application of paragraph I. 1. (c) of the Treaty Resolution of 1923 [p. 319].

2. As regards international conferences summoned by foreign Governments, no rule of universal

application can be laid down, since the nature of the representation must, in part, depend on the form of invitation issued by the convening Government.

- (a) In conferences of a technical character, it is usual and always desirable that the different parts of the Empire should (if they wish to participate) be represented separately by separate delegations, and where necessary efforts should be made to secure invitations which will render such representation possible.
- (b) Conferences of a political character called by a foreign Government must be considered on the special circumstances of each individual case.

It is for each part of the Empire to decide whether its particular interests are so involved, especially having regard to the active obligations likely to be imposed by any resulting treaty, that it desires to be represented at the conference, or whether it is content to leave the negotiation in the hands of the part or parts of the Empire more directly concerned and to accept the result.

If a Government desires to participate in the conclusion of a treaty, the method by which representation will be secured is a matter to be arranged with the other Governments of the Empire in the light of the invitation which has been received.

Where more than one part of the Empire desires to be represented, three methods of representation are possible:

- (i) By means of a common plenipotentiary or plenipotentiaries, the issue of Full Powers to whom should be on the advice of all parts of the Empire participating.
- (ii) By a single British Empire delegation composed of separate representatives of such parts of the Empire as are participating in the conference. This was the form of

representation employed at the Washington Disarmament Conference of 1921.

- (iii) By separate delegations representing each part of the Empire participating in the conference. If, as a result of consultation, this third method is desired, an effort must be made to ensure that the form of invitation from the convening Government will make this method of representation possible.<sup>1</sup>

Certain non-technical treaties should, from their nature, be concluded in a form which will render them binding upon all parts of the Empire, and for this purpose should be ratified with the concurrence of all the Governments. It is for each Government to decide to what extent its concurrence in the ratification will be facilitated by its participation in the conclusion of the treaty, as, for instance, by the appointment of a common plenipotentiary. Any question as to whether the nature of the treaty is such that its ratification should be concurred in by all parts of the Empire is a matter for discussion and agreement between the Governments.

*(c) The General Conduct of Foreign Policy.*

We went on to examine the possibility of applying the principles underlying the Treaty Resolution of the 1923 Conference to matters arising in the conduct of foreign affairs generally. It was frankly recognized that in this sphere, as in the sphere of defence, the major share of responsibility rests now, and must for some time continue to rest, with His Majesty's Government in Great Britain. Nevertheless, practically all the Dominions are engaged to some extent, and some to a considerable extent, in the conduct of foreign relations, particularly those with foreign countries on their borders. A particular instance of this is the growing work in connexion

<sup>1</sup> This is the form since adopted as best expressing Dominion sovereignty.

with the relations between Canada and the United States of America which has led to the necessity for the appointment of a Minister Plenipotentiary to represent the Canadian Government in Washington. We felt that the governing consideration underlying all discussions of this problem must be that neither Great Britain nor the Dominions could be committed to the acceptance of active obligations except with the definite assent of their own Governments. In the light of this governing consideration, the Committee agreed that the general principle expressed in relation to Treaty negotiations in Section V (a) of this Report, which is indeed already to a large extent in force, might usefully be adopted as a guide by the Governments concerned in future in all negotiations affecting foreign relations falling within their respective spheres.

*(d) The Issue of Exequaturs to Foreign Consuls in the Dominions.*

A question was raised with regard to the practice regarding the issue of exequaturs to Consuls in the Dominions. The general practice hitherto, in the case of all appointments of Consuls de Carrière in any part of the British Empire, has been that the foreign Government concerned notifies His Majesty's Government in Great Britain, through the diplomatic channel, of the proposed appointment and that, provided that it is clear that the person concerned is, in fact, a Consul de Carrière, steps have been taken, without further formality, for the issue of His Majesty's exequatur. In the case of Consuls other than those de Carrière, it has been customary for some time past to consult the Dominion Government concerned before the issue of the exequatur.

The Secretary of State for Foreign Affairs informed us that His Majesty's Government in Great Britain accepted the suggestion that in future any application by a foreign Government for the issue

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of an exequatur to any person who was to act as Consul in a Dominion should be referred to the Dominion Government concerned for consideration and that, if the Dominion Government agreed to the issue of the exequatur, it would be sent to them for counter-signature by a Dominion Minister. Instructions to this effect had indeed already been given.

(e) *The Channel of Communication between Dominion Governments and Foreign Governments.*

We took note of a development of special interest which had occurred since the Imperial Conference last met, viz. the appointment of a Minister Plenipotentiary to represent the interests of the Irish Free State in Washington, which was now about to be followed by the appointment of a diplomatic representative of Canada.<sup>1</sup> We felt that most fruitful results could be anticipated from the co-operation of His Majesty's representatives in the United States of America, already initiated, and now further to be developed. In cases other than those where Dominion Ministers were accredited to the Heads of Foreign States, it was agreed to be very desirable that the existing diplomatic channels should continue to be used, as between the Dominion Governments and foreign Governments, in matters of general and political concern.

(f) *The System of Communication and Consultation.*

Sessions of the Imperial Conference at which the Prime Ministers of Great Britain and of the Dominions are all able to be present cannot, from the nature of things, take place very frequently. The system of communication and consultation between Conferences becomes therefore of special importance. We reviewed the position now reached in this respect with special reference to the desirability

<sup>1</sup> Mr. V. Massey was shortly after appointed, retiring in 1930.



of arranging that closer personal touch should be established between Great Britain and the Dominions, and the Dominions *inter se*. Such contact alone can convey an impression of the atmosphere in which official correspondence is conducted. Development, in this respect, seems particularly necessary in relation to matters of major importance in foreign affairs where expedition is often essential and urgent decision necessary. A special aspect of the question of consultation which we considered was that concerning the representation of Great Britain in the Dominions. By reason of his constitutional position, as explained in Section IV (b) of this Report [p. 164], the Governor-General is no longer the representative of His Majesty's Government in Great Britain. There is no one therefore in the Dominion capitals in a position to represent with authority the views of His Majesty's Government in Great Britain.

We summed up our conclusions in the following Resolution which is submitted for the consideration of the Conference:

'The Governments represented at the Imperial Conference are impressed with the desirability of developing a system of personal contact, both in London and in the Dominion capitals, to supplement the present system of inter-communication and the reciprocal supply of information on affairs requiring joint consideration. The manner in which any new system<sup>1</sup> is to be worked out is a matter for consideration and settlement between His Majesty's Governments in Great Britain and the Dominions, with due regard to the circumstances of each particular part of the Empire, it being understood that any new arrangements

<sup>1</sup> A High Commissioner for the United Kingdom at Ottawa was appointed in 1923, and in the Union and Australia similar arrangements followed in 1931. See Keith, *The Sovereignty of the British Dominions*, pp. 484, 485; and below, p. 423.

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should be supplementary to, and not in replacement of, the system of direct communication from Government to Government and the special arrangements which have been in force since 1918 for communications between Prime Ministers.'

#### (g) *Particular Aspects of Foreign Relations discussed by Committee.*

It was found convenient that certain aspects of foreign relations on matters outstanding at the time of the Conference should be referred to us, since they could be considered in greater detail, and more informally, than at meetings of the full Conference.

One question which we studied was that of arbitration in international disputes, with special reference to the question of acceptance of Article 36 of the Statute of the Permanent Court of International Justice, providing for the compulsory submission of certain classes of cases to the Court. On this matter we decided to submit no Resolution to the Conference, but, whilst the members of the Committee were unanimous in favouring the widest possible extension of the method of arbitration for the settlement of international disputes, the feeling was that it was at present premature to accept the obligations under the Article in question. A general understanding was reached that none of the Governments represented at the Imperial Conference would take any action in the direction of the acceptance of the compulsory jurisdiction of the Permanent Court, without bringing up the matter for further discussion.

Connected with the question last mentioned, was that of adherence of the United States of America to the protocol establishing the Permanent Court of International Justice.

The special conditions upon which the United

States desired to become a party to the protocol had been discussed at a special Conference held in Geneva in September 1926, to which all the Governments represented at the Imperial Conference had sent representatives. We ascertained that each of these Governments was in accord with the conclusions reached by the special Conference and with the action which that Conference recommended.<sup>1</sup>

The Imperial Conference was fortunate in meeting at a time just after the ratifications of the Locarno Treaty of Mutual Guarantee had been exchanged on the entry of Germany into the League of Nations. It was therefore possible to envisage the results which the Locarno Policy had achieved already, and to forecast to some extent the further results which it was hoped to secure. These were explained and discussed. It then became clear that, from the standpoint of all the Dominions and of India, there was complete approval of the manner in which the negotiations had been conducted and brought to so successful a conclusion.

Our final and unanimous conclusion was to recommend to the Conference the adoption of the following Resolution:

'The Conference has heard with satisfaction the statement of the Secretary of State for Foreign Affairs with regard to the efforts made to ensure peace in Europe, culminating in the agreements of Locarno; and congratulates His Majesty's Government in Great Britain on its share in this successful contribution towards the promotion of the peace of the world.'

Signed on behalf of the Committee,  
BALFOUR, *Chairman*.

November 18, 1926.

<sup>1</sup> The matter was arranged by a protocol at Geneva, September 14, 1929, ratified in 1930 by all the Dominions; see Wheaton, *International Law* (ed. Keith), I. 575, 576. But the United States had not adhered up to 1932.

## 2. Defence

The Conference gave much consideration to the question of defence, and to the methods by which the defence arrangements of each part of the Empire could be most effectively co-ordinated.

The Prime Minister of Great Britain initiated the discussions on the 26th October by a review of the work and organization of the Committee of Imperial Defence, in the course of which he emphasized the purely advisory and consultative character of this body. He also outlined the chief developments which had taken place since the last Conference, notably the creation of the Chiefs of Staff Sub-Committee and the decision to establish an Imperial Defence College.

After a reference to the progress already made and to the further steps to be taken in the development of the Naval Base at Singapore, Mr. Baldwin mentioned that the pursuance of this policy had been greatly facilitated by the contributions of the Federated Malay States, Hong Kong, and the Straits Settlements.

Mr. Baldwin was followed by the Senior Officer of the Chiefs of Staff Sub-Committee (Admiral of the Fleet Earl Beatty) in a survey of the general strategic situation, and by the Secretary of State for India in a summary of the special problems of Indian defence.

The discussions were renewed on the 15th November, when statements were made by the Prime Ministers of Canada, the Commonwealth of Australia, New Zealand, and Newfoundland, by Mr. Havenga for the Union of South Africa, by Mr. O'Higgins for the Irish Free State, and by the Maharaja of Burdwan for India.<sup>1</sup>

Meetings also took place at the Admiralty, the

<sup>1</sup> Extracts from the speeches made on October 26 and November 15 will be found in Appendix IV in Cmd. 2769.

War Office, and the Air Ministry, at which the situation from the standpoint of His Majesty's Government in Great Britain was presented in greater detail, and other phases of common interest were considered at a meeting held at the Offices of the Committee of Imperial Defence.

Much interest attached to the opportunities afforded for observation of the various arms of the Service in operation, notably the naval review off Portland, the army mechanical display at Camberley, and the air demonstrations at Croydon and Cardington. Apart from their interest from the point of view of defence, these displays revealed technical developments in mechanical traction and in aviation which may prove of importance in their application for civilian purposes.

The information thus obtained and the opinions exchanged will, it is believed, prove of much practical value in aiding the several Governments of the Empire in the determination of their policies of defence, and are commended to their most careful consideration.

The conclusions reached by the Imperial Conference on the subject of defence may be summarized as follows:

1. The Resolutions on Defence adopted at the last session of the Conference<sup>1</sup> are reaffirmed.

2. The Imperial Conference regrets that it has not been possible to make greater progress with the international reduction and limitation of armaments referred to in these Resolutions. It is the common desire of the Governments represented at this Conference to do their utmost in pursuit of this object so far as this is consistent with the safety and integrity of all parts of the Empire and its communications.

3. The Conference recognizes that, even after a large measure of reduction and limitation of

<sup>1</sup> See p. 396, *post*.

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armaments has been achieved, a considerable effort will be involved in order to maintain the minimum standard of naval strength contemplated in the Washington Treaty on Limitation of Armament, namely, equality with the naval strength of any foreign power. It has noted the statements set forth by the Admiralty as to the formidable expenditure required within coming years for the replacement of warships, as they become obsolete, by up-to-date ships.

4. Impressed with the vital importance of ensuring the security of the world-wide trade routes upon which the safety and welfare of all parts of the Empire depend, the representatives of Australia, New Zealand, and India note with special interest the steps already taken by His Majesty's Government in Great Britain to develop the Naval Base at Singapore, with the object of facilitating the free movement of the Fleets. In view of the heavy expenditure involved, they welcome the spirit of co-operation shown in the contributions made with the object of expediting this work.

5. The Conference observes that steady progress has been made in the direction of organizing military formations in general on similar lines; in the adoption of similar patterns of weapons; and in the interchange of officers between different parts of the Empire; it invites the Governments concerned to consider the possibility of extending these forms of co-operation and of promoting further consultation between the respective General Staffs on defence questions adjudged of common interest.

6.—(a) The Conference takes note with satisfaction of the substantial progress that has been made since 1923 in building up the Air Forces and resources of the several parts of the Empire.

(b) Recognizing that the fullest mobility is essential to the effective and economical employment of air power, the Conference recommends, for the

consideration of the several Governments, the adoption of the following principle:

The necessity for creating and maintaining an adequate chain of air bases and refuelling stations.

(c) Impressed with the desirability of still closer co-ordination in this as in all other spheres of common interest, and in particular with the advantages which should follow from a more general dissemination of the experience acquired in the use of this new arm under the widely varying conditions which obtain in different parts of the Empire, the Conference recommends for consideration by the Governments interested the adoption in principle of a system of mutual interchange of individual officers for liaison and other duties, and of complete air units, so far as local requirements and resources permit.

7. The Conference recognizes that the defence of India already throws upon the Government of India responsibilities of a specially onerous character, and takes note of their decision to create a Royal Indian Navy.

8. The Conference notes with satisfaction that considerable progress in the direction of closer co-operation in defence matters has been effected by the reciprocal attachment of naval, military, and air officers to the Staff Colleges and other technical establishments maintained in various parts of the Empire, and invites the attention of the Governments represented to the facilities afforded by the new Imperial Defence College in London for the education of officers in the broadest aspects of strategy.

9. The Conference takes note of the developments in the organization of the Committee of Imperial Defence since the session of 1923. It invites the attention of the Governments represented at the Conference to the following Resolutions adopted,

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with a view to consultation in questions of common defence, at a meeting of the Committee of Imperial Defence held on the 30th May, 1911, in connexion with the Imperial Conference of that year:

(1) That one or more representatives appointed by the respective Governments of the Dominions should be invited to attend meetings of the Committee of Imperial Defence when questions of naval and military<sup>1</sup> defence affecting the Oversea Dominions are under consideration.

(2) The proposal that a Defence Committee should be established in each Dominion is accepted in principle. The Constitution of these Defence Committees is a matter for each Dominion to decide.

*Note.*—The Resolutions of the Imperial Conference of 1923 on Defence were as follows:

1. The Conference affirms that it is necessary to provide for the adequate defence of the territories and trade of the several countries comprising the British Empire.
2. In this connexion the Conference expressly recognizes that it is for the Parliaments of the several parts of the Empire, upon the recommendations of their respective Governments, to decide the nature and extent of any action which should be taken by them.
3. Subject to this provision, the Conference suggests the following as guiding principles:
  - (a) The primary responsibility of each portion of the Empire represented at the Conference for its own local defence.
  - (b) Adequate provision for safeguarding the maritime communications of the several parts of the Empire and the routes and waterways along and through which their armed forces and trade pass.
  - (c) The provision of Naval Bases and facilities for repair and fuel, so as to ensure the mobility of the fleets.
  - (d) The desirability of the maintenance of a minimum standard of Naval Strength, namely, equality with the Naval Strength of any foreign

<sup>1</sup> The words 'and air' would be required to bring the Resolution up to date.



Power, in accordance with the provisions of the Washington Treaty on Limitation of Armament as approved by Great Britain, all the self-governing Dominions, and India.

- (e) The desirability of the development of the Air Forces in the several countries of the Empire upon such lines as will make it possible, by means of the adoption, as far as practicable, of a common system of organization and training and the use of uniform manuals, patterns of arms, equipment, and stores (with the exception of the type of aircraft), for each part of the Empire as it may determine, to co-operate with other parts with the least possible delay and the greatest efficiency.
4. In the application of these principles to the several parts of the Empire concerned the Conference takes note of—
- (a) The deep interest of the Commonwealth of Australia, the Dominion of New Zealand, and India, in the provision of a Naval Base at Singapore, as essential for ensuring the mobility necessary to provide for the security of the territories and trade of the Empire in Eastern Waters.
  - (b) The necessity for the maintenance of safe passage along the great route to the East through the Mediterranean and the Red Sea.
  - (c) The necessity for the maintenance by Great Britain of a Home Defence Air Force of sufficient strength to give adequate protection against air attack by the strongest air force within striking distance of her shores.
5. The Conference, while deeply concerned for the paramount importance of providing for the safety and integrity of all parts of the Empire, earnestly desires, so far as is consistent with this consideration, the further limitation of armaments, and trusts that no opportunity may be lost to promote this object.

## X. THE PARIS TREATY FOR THE RENUNCIATION OF WAR, 1928

### 1. *Mr. Kellogg's Address to the American Society of International Law, April 28, 1928*

In an address which he delivered on the 28th April, 1928, before the American Society of International Law, the Secretary of State of the United States explained fully the construction placed by his Government upon the Treaty proposed by it, referring as follows to the six major considerations emphasized by France in its alternative draft Treaty and prior diplomatic correspondence:

#### 1. *Self-defence.*

There is nothing in the American draft of an Anti-war Treaty which restricts or impairs in any way the right of self-defence. That right is inherent in every sovereign State and is implicit in every treaty. Every nation is free at all times, and regardless of treaty provisions, to defend its territories from attack or invasion, and it alone is competent to decide whether circumstances require recourse to war in self-defence. If it has a good case, the world will applaud and not condemn its action. Express recognition by treaty of this inalienable right, however, gives rise to the same difficulty encountered in any effort to define aggression. It is the identical question approached from the other side. In this respect, no treaty provision can add to the natural right of self-defence. It is not in the interest of peace that a treaty should stipulate a juristic conception of self-defence, since it is far too easy for the unscrupulous to mould events to accord with an agreed definition.

#### 2. *The League Covenant.*

The Covenant imposes no affirmative primary obligation to go to war. The obligation, if any, is

secondary, and attaches only when deliberately accepted by a State. Article 10 of the Covenant has, for example, been interpreted by a resolution submitted to the Fourth Assembly, but not formally adopted owing to one adverse vote, to mean that: 'It is for the constitutional authorities of each member to decide, in reference to the obligation of preserving the independence and the integrity of the territory of the members, in what degree the member is bound to assure the execution of this obligation by employment of its military forces.'

There is, in my opinion, no necessary inconsistency between the Covenant and the idea of an unqualified renunciation of war. The Covenant can, it is true, be construed as authorizing war in certain circumstances, but it is an authorization and not a positive requirement.

### 3. *The Treaties of Locarno.*

If the parties to the Treaties of Locarno are under any positive obligation to go to war, such obligation certainly would not attach until one of the parties has resorted to war in violation of its solemn pledges thereunder. It is therefore obvious that, if all the parties to the Locarno Treaties become parties to the multilateral Anti-war Treaty proposed by the United States, there would be a double assurance that the Locarno Treaties would not be violated by recourse to arms. In such an event it would follow that resort to war by any State, in violation of the Locarno Treaties, would also be a breach of the multilateral Anti-war Treaty, and the other parties to the Anti-war Treaty would thus, as a matter of law, be automatically released from their obligations thereunder and free to fulfil their Locarno commitments. The United States is entirely willing that all parties to the Locarno Treaties should become parties to its proposed Anti-war Treaty, either through signature in the first instance, or by

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immediate accession to the Treaty as soon as it comes into force in the manner provided in Article 3 of the American draft, and it will offer no objection when and if such a suggestion is made.

#### 4. *Treaties of Neutrality.*

The United States is not informed as to the precise treaties which France has in mind, and cannot, therefore, discuss their provisions. It is not unreasonable to suppose, however, that the relations between France and the States whose neutrality she has guaranteed are sufficiently close and intimate to make it possible for France to persuade such States to adhere seasonably to the Anti-war Treaty proposed by the United States. If this were done, no party to the Anti-war Treaty could attack the neutralized States without violating the Treaty and thereby automatically freeing France and the other Powers in respect of the Treaty-breaking State from the obligations of the Anti-war Treaty. If the neutralized States were attacked by a State not a party to the Anti-war Treaty, the latter Treaty would, of course, have no bearing, and France would be as free to act under the treaties guaranteeing neutrality as if she were not a party to the Anti-war Treaty. It is difficult to conceive, therefore, how treaties guaranteeing neutrality can be regarded as necessarily preventing the conclusion by France or any other Power of a multilateral Treaty for the Renunciation of War.

#### 5. *Relations with a Treaty-breaking State.*

As I have already pointed out, there can be no question, as a matter of law, that violation of a multilateral Anti-war Treaty through resort to war by one party thereto would automatically release the other parties from their obligations to the Treaty-breaking States. Any express recognition of this principle of law is wholly unnecessary.

#### 6. *Universality.*

From the beginning it has been the hope of the United States that its proposed multilateral Anti-war Treaty should be world-wide in its application, and appropriate provision therefor was made in the draft submitted to the other Governments on the 13th April. From a practical standpoint, it is clearly preferable, however, not to postpone the coming into force of an Anti-war Treaty until all the nations of the world can agree upon the text of such a Treaty and cause it to be ratified. For one reason or another, a State so situated as to be no menace to the peace of the world might obstruct agreement or delay ratification in such manner as to render abortive the efforts of all the other Powers. It is highly improbable, moreover, that a form of treaty acceptable to the British, French, German, Italian, and Japanese Governments, as well as to the United States, would not be equally acceptable to most if not all of the other Powers of the world. Even were this not the case, however, the coming into force among the above-named six Powers of an effective Anti-war Treaty and their observance thereof would be a practical guaranty against a second world war. This in itself would be a tremendous service to humanity, and the United States is not willing to jeopardize the practical success of the proposal which it has made by conditioning the coming into force of the Treaty upon prior universal or almost universal acceptance.

#### 2. *Sir Austen Chamberlain to the United States Ambassador, May 19, 1928*

Your Excellency,

Your note of the 13th April, containing the text of a draft Treaty for the Renunciation of War, together with copies of the correspondence between the United States and French Governments on the

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subject of this Treaty, has been receiving sympathetic consideration at the hands of His Majesty's Government in Great Britain. A note has also been received from the French Government, containing certain suggestions for discussion in connexion with the proposed Treaty, and the German Government were good enough to send me a copy of the reply which has been made by them to the proposals of the United States Government.

2. The suggestion for the conclusion of a Treaty for the Renunciation of War as an instrument of national policy has evoked widespread interest in this country, and His Majesty's Government will support the movement to the utmost of their power.

3. After making a careful study of the text contained in your Excellency's note and of the amended text suggested in the French note, His Majesty's Government feel convinced that there is no serious divergence between the effect of these two drafts. This impression is confirmed by a study of the text of the speech by the Secretary of State of the United States to which your Excellency drew my attention, and which he delivered before the American Society of International Law on the 28th April. The aim of the United States Government, as I understand it, is to embody in a treaty a broad statement of principle, to proclaim without restriction or qualification that war shall not be used as an instrument of policy. With this aim His Majesty's Government are wholly in accord. The French proposals, equally imbued with the same purpose, have merely added an indication of certain exceptional circumstances in which the violation of that principle by one party may oblige the others to take action seeming at first sight to be inconsistent with the terms of the proposed pact. His Majesty's Government appreciate the scruples which have prompted these suggestions by the French Government. The exact fulfilment of treaty engagements is a matter which affects the

national honour; precision as to the scope of such engagements is, therefore, of importance. Each of the suggestions made by the French Government has been carefully considered from this point of view.

4. After studying the wording of Article 1 of the United States draft, His Majesty's Government do not think that its terms exclude action which a State may be forced to take in self-defence. Mr. Kellogg has made it clear in the speech to which I have referred above that he regards the right of self-defence as inalienable, and His Majesty's Government are disposed to think that on this question no addition to the text is necessary.

5. As regards the text of Article 2, no appreciable difference is found between the American and the French proposals. His Majesty's Government are, therefore, content to accept the former if, as they understand to be the case, a dispute 'among the High Contracting Parties' is a phrase wide enough to cover a dispute between any two of them.

6. The French note suggests the addition of an article providing that violation of the Treaty by one of the parties should release the remainder from their obligations under the Treaty towards that party. His Majesty's Government are not satisfied that, if the Treaty stood alone, the addition of some such provision would not be necessary. Mr. Kellogg's speech, however, shows that he put forward for acceptance the text of the proposed Treaty upon the understanding that violation of the undertaking by one party would free the remaining parties from the obligation to observe its terms in respect of the Treaty-breaking State.

7. If it is agreed that this is the principle which will apply in the case of this particular Treaty, His Majesty's Government are satisfied and will not ask for the insertion of any amendment. Means can no doubt be found without difficulty of placing this

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understanding on record in some appropriate manner so that it may have equal value with the terms of the Treaty itself.

8. The point is one of importance because of its bearing on the treaty engagements by which His Majesty's Government are already bound. The preservation of peace has been the chief concern of His Majesty's Government and the prime object of all their endeavours. It is the reason why they have given ungrudging support to the League of Nations and why they have undertaken the burden of the guarantee embodied in the Locarno Treaty. The sole object of all these engagements is the elimination of war as an instrument of national policy, just as it is the purpose of the peace pact now proposed. It is because the object of both is the same that there is no real antagonism between the treaty engagements which His Majesty's Government have already accepted and the pact which is now proposed. The machinery of the Covenant and of the Treaty of Locarno, however, go somewhat further than a renunciation of war as a policy, in that they provide certain sanctions for a breach of their obligations. A clash might thus conceivably arise between the existing treaties and the proposed pact unless it is understood that the obligations of the new engagement will cease to operate in respect of a party which breaks its pledges and adopts hostile measures against one of its co-contractants.

9. For the Government of this country respect for the obligations arising out of the Covenant of the League of Nations and out of the Locarno Treaties is fundamental. Our position in this regard is identical with that of the German Government as indicated in their note of the 27th April. His Majesty's Government could not agree to any new treaty which would weaken or undermine these engagements on which the peace of Europe rests. Indeed, public interest in this country in the scrupu-



lous fulfilment of these engagements is so great that His Majesty's Government would for their part prefer to see some such provision as Article 4 of the French draft embodied in the text of the Treaty. To this we understand there will be no objection. Mr. Kellogg has made it clear in the speech to which I have drawn attention that he had no intention by the terms of the new Treaty of preventing the parties to the Covenant of the League or to the Locarno Treaty from fulfilling their obligations.

10. The language of Article 1, as to the renunciation of war as an instrument of national policy, renders it desirable that I should remind your Excellency that there are certain regions of the world the welfare and integrity of which constitute a special and vital interest for our peace and safety. His Majesty's Government have been at pains to make it clear in the past that interference with these regions cannot be suffered. Their protection against attack is to the British Empire a measure of self-defence. It must be clearly understood that His Majesty's Government in Great Britain accept the new Treaty upon the distinct understanding that it does not prejudice their freedom of action in this respect. The Government of the United States have comparable interests any disregard of which by a foreign Power they have declared that they would regard as an unfriendly act. His Majesty's Government believe, therefore, that in defining their position they are expressing the intention and meaning of the United States Government.

11. As regards the measure of participation in the new Treaty before it would come into force, His Majesty's Government agree that it is not necessary to wait until all the nations of the world have signified their willingness to become parties. On the other hand, it would be embarrassing if certain States in Europe with whom the proposed participants are already in close treaty relations were not

included among the parties. His Majesty's Government see no reason, however, to doubt that these States will gladly accept its terms. Universality would, in any case, be difficult of attainment, and might even be inconvenient, for there are some States whose Governments have not yet been universally recognized, and some which are scarcely in a position to ensure the maintenance of good order and security within their territories. The conditions for the inclusion of such States among the parties to the new Treaty is a question to which further attention may perhaps be devoted with advantage. It is, however, a minor question as compared with the attainment of the more important purpose in view.

12. After this examination of the terms of the proposed Treaty and of the points to which it gives rise, your Excellency will realize that His Majesty's Government find nothing in their existing commitments which prevents their hearty co-operation in this movement for strengthening the foundations of peace. They will gladly co-operate in the conclusion of such a pact as is proposed and are ready to engage with the interested Governments in the negotiations which are necessary for the purpose.

13. Your Excellency will observe that the detailed arguments in the foregoing paragraphs are expressed on behalf of His Majesty's Government in Great Britain. It will, however, be appreciated that the proposed Treaty, from its very nature, is not one which concerns His Majesty's Government in Great Britain alone, but is one in which they could not undertake to participate otherwise than jointly and simultaneously with His Majesty's Governments in the Dominions and the Government of India. They have, therefore, been in communication with those Governments, and I am happy to be able to inform your Excellency that as a result of the communications which have passed it has been ascertained

that they are all in cordial agreement with the general principle of the proposed Treaty. I feel confident, therefore, that on receipt of an invitation to participate in the conclusion of such a Treaty, they, no less than His Majesty's Government in Great Britain, will be prepared to accept the invitation.

I have, &c.

AUSTEN CHAMBERLAIN.

3. *The Treaty for the Renunciation of War, Paris,  
August 27, 1928*

The President of the German Reich ;  
The President of the United States of America ;  
The President of the French Republic ;  
His Majesty the King of the Belgians ;  
His Majesty the King of Great Britain, Ireland, and  
the British Dominions beyond the Seas, Emperor of India ;  
His Majesty the King of Italy ;  
His Majesty the Emperor of Japan ;  
The President of the Republic of Poland ;  
The President of the Czecho-Slovak Republic ;

Deeply sensible of their solemn duty to promote the welfare of mankind ;

Persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made, to the end that the peaceful and friendly relations now existing between their peoples may be perpetuated ;

Convinced that all changes in their relations with one another should be sought only by pacific means and be the result of a peaceful and orderly process, and that any signatory Power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this Treaty ;

Hopeful that, encouraged by their example, all the other nations of the world will join in this

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humane endeavour and, by adhering to the present Treaty as soon as it comes into force, bring their peoples within the scope of its beneficent provisions, thus uniting the civilized nations of the world in a common renunciation of war as an instrument of their national policy;

Have decided to conclude a treaty and for that purpose have appointed as their respective plenipotentiaries:

His Majesty the King of Great Britain, Ireland, and the British Dominions beyond the Seas, Emperor of India:

For Great Britain and Northern Ireland and all parts of the British Empire, which are not separate members of the League of Nations:

For the Dominion of Canada:

For the Commonwealth of Australia:

For the Dominion of New Zealand:

For the Union of South Africa:

For the Irish Free State:

For India:

Who, having communicated to one another their full powers, found in good and due form, have agreed upon the following articles:

##### Article 1.

The High Contracting Parties solemnly declare, in the names of their respective peoples, that they condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy in their relations with one another.

##### Article 2.

The High Contracting Parties agree that the settlement or solution of all disputes or conflicts, of

whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

Article 3.

The present Treaty shall be ratified by the High Contracting Parties named in the Preamble in accordance with their respective constitutional requirements, and shall take effect as between them as soon as all their several instruments of ratification shall have been deposited at Washington.<sup>1</sup>

This Treaty shall, when it has come into effect as prescribed in the preceding paragraph, remain open as long as may be necessary for adherence by all the other Powers of the world. Every instrument evidencing the adherence of a Power shall be deposited at Washington, and the Treaty shall, immediately upon such deposit, become effective as between the Power thus adhering and the other Powers parties hereto.

It shall be the duty of the Government of the United States to furnish each Government named in the Preamble, and every Government subsequently adhering to this Treaty, with a certified copy of the Treaty and of every instrument of ratification or adherence. It shall also be the duty of the Government of the United States telegraphically to notify such Governments immediately upon the deposit with it of each instrument of ratification or adherence.

In faith whereof the respective plenipotentiaries have signed this Treaty in the French and English languages, both texts having equal force, and hereunto affix their seals.

Done at Paris the twenty seventh day of August in the year one thousand nine hundred and twenty-eight.

<sup>1</sup> The Treaty came into force on July 24, 1929.

XI. MEMORANDUM ON THE SIGNATURE  
BY HIS MAJESTY'S GOVERNMENT IN THE  
UNITED KINGDOM OF THE OPTIONAL  
CLAUSE OF THE STATUTE OF THE PERMA-  
NENT COURT OF INTERNATIONAL JUSTICE,  
1929

2. This Article [13 of the Covenant of the League of Nations<sup>1</sup>] provides a description of classes of international disputes which are to be regarded as justiciable, that is to say, suitable for decision by a court applying rules of law. But it does not impose upon the Members of the League any actual obligation to have such disputes settled in this manner; the words '*they recognize to be suitable for submission to arbitration or judicial settlement*', and '*those which are generally suitable for submission to arbitration or judicial settlement*', leave it open to any Member of the League to refuse to have any particular dispute settled in this way.

3. The original draft of the Statute of the Permanent Court of International Justice contained a provision giving the Court compulsory jurisdiction in the classes of cases set out in Article 13 of the Covenant. In the Statute as adopted by the First Assembly this was replaced by a provision which appears in Article 36 of the Statute. It is as follows:

'The Members of the League of Nations and the States mentioned in the Annex to the Covenant may, either when signing or ratifying the protocol to which the present Statute is adjoined, or at a later moment, declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other Member or State accepting the same obligation, the juris-

<sup>1</sup> See p. 22, *ante*.

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diction of the Court in all or any of the classes of legal disputes concerning—

- (a) the interpretation of a treaty;
- (b) any question of international law;
- (c) the existence of any fact which, if established, would constitute a breach of an international obligation;
- (d) the nature or extent of the reparation to be made for the breach of an international obligation.

‘The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time.’

4. It is the making of the declaration referred to in the above provision which is generally known as ‘signing the Optional Clause’. States which have signed the clause have done so in varying terms, but the model form which is annexed to copies of the Statute of the Court is as follows:

‘The undersigned, being duly authorized thereto, further declare on behalf of their Government, that, from this date, they accept as compulsory *ipso facto* and without special convention, the jurisdiction of the Court in conformity with Article 36, paragraph 2, of the Statute of the Court, under the following conditions:’

5. The terms of Article 36 have been regarded as admitting the making of a reserve or exception of any kind when accepting the compulsory jurisdiction of the Court because the jurisdiction of the Court may be accepted ‘*in all or any*’ of the classes of legal disputes enumerated. Up to July in the present year, the Optional Clause had been signed and ratified by the following States: Abyssinia, Austria, Belgium, Brazil, Bulgaria, Denmark, Estonia, Finland, Germany, Haiti, Hungary,

Netherlands, Norway, Panamá, Portugal, Spain, Sweden, Switzerland, and Uruguay.

6. Article 2 of the Treaty for the Renunciation of War as an Instrument of National Policy, now generally known as the Pact of Peace, provides that:

‘The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.’

The Treaty, however, does not provide any machinery for the pacific settlement of disputes. As regards disputes of a justiciable character, therefore, His Majesty's Government in the United Kingdom consider signature of the Optional Clause as the logical consequence of the acceptance of the Pact of Peace. Acceptance of the Optional Clause means that disputes falling within its terms will receive from the Permanent Court of International Justice a definite solution, which the parties to the dispute are bound under Article 13 of the Covenant to ‘carry out in full good faith’. If the Pact of Peace is to be made fully effective, it seems necessary that the legal renunciation of war should be accompanied by definite acts providing machinery for the peaceful settlement of disputes. His Majesty's Government in the United Kingdom believe that the first step in thus building up barriers against war is to secure the general acceptance of a system under which justiciable disputes will be settled by the operation of law. His Majesty's Government were, therefore, most anxious to sign the Optional Clause at the earliest possible moment. By so doing they hoped both to give to the world a proof of their confidence in the Pact of Peace and an earnest of their own desire to secure the peaceful settlement of justiciable disputes in which they might become involved, and also to do what lay in their power to stimulate other



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nations to do the same. The extent to which the latter object has already been fulfilled is shown by the fact that the Optional Clause was signed during the last Assembly by Czecho-Slovakia, France, Italy, Latvia, Nicaragua, Peru, and Siam, in addition to all the Dominions which are separate Members of the League and India. There are, indeed, at the present moment, only thirteen Members of the League which have not signed the Optional Clause, and it is understood that some of the thirteen now have the matter under consideration.

7. After discussion with the Governments of the Dominions before and during the Assembly, the Optional Clause was signed by the Secretary of State for Foreign Affairs on the 19th September in the following terms:

8. 'On behalf of His Majesty's Government in the United Kingdom and subject to ratification, I accept as compulsory *ipso facto* and without special convention, on condition of reciprocity, the jurisdiction of the Court in conformity with Article 36, paragraph 2, of the Statute of the Court, for a period of ten years and thereafter until such time as notice may be given to terminate the acceptance, over all disputes arising after the ratification of the present declaration with regard to situations or facts subsequent to the said ratification, other than:

'Disputes in regard to which the parties to the dispute have agreed or shall agree to have recourse to some other method of peaceful settlement; and

'Disputes with the Government of any other Member of the League which is a member of the British Commonwealth of Nations, all of which disputes shall be settled in such manner as the parties have agreed or shall agree; and

'Disputes with regard to questions which by international law fall exclusively within the jurisdiction of the United Kingdom.

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'And subject to the condition that His Majesty's Government reserve the right to require that proceedings in the Court shall be suspended in respect of any dispute which has been submitted to and is under consideration by the Council of the League of Nations, provided that notice to suspend is given after the dispute has been submitted to the Council and is given within ten days of the notification of the initiation of the proceedings in the court, and provided also that such suspension shall be limited to a period of twelve months or such longer period as may be agreed by the parties to the dispute or determined by a decision of all the Members of the Council other than the parties to the dispute.'

9. The Optional Clause was also signed by the Dominions and by India. All these, with the exception of the Irish Free State, made Declarations identical in terms with that set out in the preceding paragraph above. The Declaration made by the Irish Free State was as follows:

'On behalf of the Irish Free State I declare that I accept as compulsory *ipso facto* and without special convention the jurisdiction of the Court in conformity with Article 36 of the Statute of the Permanent Court of International Justice for a period of twenty years and on the sole condition of reciprocity. This declaration is subject to ratification.'

10. At the time of signature the Secretary of State made the following statement explaining the formula of acceptance adopted by His Majesty's Government in the United Kingdom:

11. 'The "Optional Clause", which His Majesty's Government in the United Kingdom are now accepting, gives the Permanent Court of International Justice at The Hague jurisdiction over juridical

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disputes with other parties accepting the like obligation without the necessity for framing in respect of each dispute a special agreement for its submission to the Court.

'The formula which I have just signed on behalf of the United Kingdom, and copies of which are, I believe, available, follows the usual practice in being subject to reciprocity and in including a time-limit. This is fixed at ten years, but the acceptance continues in force after the expiration of the period, unless notice is given to terminate it. The signature is also subject to ratification. This will enable the question to be raised in Parliament, if so desired, before the acceptance of the compulsory jurisdiction comes into operation.

'The declaration accepting the jurisdiction covers only disputes which may arise in future. Past disputes and disputes relating to past events will continue to be submitted to the Court under a special agreement concluded in each case.

'Three classes of disputes are excluded from the operation of the declaration of acceptance. These are disputes for the submission of which to some other method of peaceful settlement provision is made by existing or future agreements, disputes with other members of the British Commonwealth of Nations, and disputes about matters which fall within what is called the domestic jurisdiction of a State. Commercial treaties and conventions dealing with special subjects, such as reparations, or with technical matters, such as copyright, very often contain provisions setting up special tribunals to deal with disputes which may arise as to the meaning or application of their terms. When that is the case, the dispute will be dealt with as provided in the agreement and will not be submitted to the Court at The Hague. This is the effect of the exclusion of the first class of disputes.

'Disputes with other members of the British

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Commonwealth of Nations<sup>1</sup> are excluded because the members of the Commonwealth, though international units individually in the fullest sense of the term, are united by their common allegiance to the Crown. Disputes between them should, therefore, be dealt with by some other mode of settlement, and for this provision is made in the exclusion clause.

'On certain matters international law recognizes that the authority of the State is supreme. When once it is determined that the subject-matter of the dispute falls within the category of cases where this is so, there is no scope for the exercise of the jurisdiction of an international tribunal.

'At the end of the formula comes a proviso which enables disputes to be referred to the Council of the League before they are dealt with by the Court. This is to cover disputes which are really political in character though juridical in appearance. Disputes of this kind can be dealt with more satisfactorily by the Council, so that the conciliatory powers of that body may be exercised with a view to arriving at a friendly settlement of the dispute. This formula places the United Kingdom in much the same position as a State which has agreed to a treaty of arbitration and conciliation providing for the reference of all disputes to a conciliation commission before they are submitted to judicial settlement. The formula is wide in character because the extent to which it operates depends on the Council itself. It would cease to operate from the moment when the Council decided that it was better that the question should be submitted to the Court, and therefore declined to keep the dispute under consideration. Within these limits, however, the

<sup>1</sup> The term, of course, includes India, and one of the reasons for the exclusion of the disputes referred to is the objection of the Dominions to have their issues as to immigration and treatment of resident Indians submitted to an International Court; see Mr. Bennett, Canadian House of Commons, May 16, 1931.

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proviso would apply to any justiciable dispute, whatever its origin. It would extend, for instance, to disputes arising out of cases where it had been necessary for the United Kingdom to take action at the instance of the Council in pursuance of its obligations as a Member of the League.'

## XII. THE NAVAL CONFERENCE, 1930

1. *The Rt. Hon. R. MacDonald, St. James's Palace, April 23, 1930*

THE Chairman: Gentlemen—We have now gone as far as we can go at present, and we are met together this morning to gather our points of agreement and embody them in a Treaty. Compared with Washington or Geneva we have progressed far; compared with our desires we are still short. This is but another stage, and the work will have to be continued. We must go on attacking the problems which have baffled us. Upon one thing we can congratulate ourselves. Every one who has taken part in this Conference knows how again and again a mistaken word or awkward handling could have created troubled situations which would not have been allayed speedily, and yet we part to-day in a spirit of active goodwill, determined to make this a beginning, and to use every means which offers itself to make a Five-Power Treaty a reality. The Conference has done a great work. We have secured a Three-Power Agreement on building programmes—no mean or unimportant achievement. This, with other points embodied in the Treaty, has repeatedly defied solution and has brought conference after conference to naught. On the apparently simple matter of settling the method by which the relative strengths of navies may be agreed hitherto there have been insoluble differences of opinion. That is gone. We have stopped the replacement of battle-ships and reduced their numbers. We have limited the tonnage of auxiliary craft. We have shown how the equipment, the building, and the replacement of fleets can be brought within the realm of international order. We have proved how, when the world likes, the menace of arms can be removed by treaties regulating their development. True the

work has been but partially done, but all great advances of this kind must be in stages, and we have gone much farther than had as yet been possible.

Figures have been published already showing the reductions in building and savings in cost which result from our negotiations, but I doubt if the public have yet appreciated how much in this respect has been effected. There are definite programmes arranged to be built as well as ships actually built, and a reduction in these programmes is almost as valuable as a scrapping of ships. We found the world's navies at a point of serious and dangerous expansion. Competition had begun, nations were at the fatal moment of once again, by a process of mental delusion, reducing their security against war by increasing their armaments. So long as that will-o'-the-wisp is followed conferences like this must fail, or at any rate can but partially succeed. We must just be content to go on strengthening the new mentality of peace and applying it step by step in further and further reductions.

The Treaty carries us to 1936, when further progress in the same direction ought to be possible. The British Government place a very high value on Paris Pacts and Treaties for the peaceful settlement of disputes, and they therefore made an offer to come to an agreement upon all-round reductions in naval strengths, from battleships to submarines, in such a way as not to entail a loss of security upon any nation. Such an agreement has been come to between the United States, Japan, and ourselves, but the European situation was harder to resolve.

Until it is resolved and agreement is come to regarding it, every bond of limited scope must have the protection of a safeguarding clause such as that in the Treaty which we sign to-day. But I wish to say this about that clause. It is not put in as an easy way to get round the Treaty. I hope it will never be used; but, if it has to be, that will only

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happen after every effort has been made to avoid it. Only when it is apparent that, owing to the ships built, building, or definitely authorized by any Power or Powers, our naval position is so affected that it is impossible for this country to rest in peace of mind upon the figures embodied in Part III of this Treaty—only then shall this protection clause be thought about.

The British Government are ready now, and always will be, to strive with might and main to prevent this from arising, and we have every hope that, as a result of the conversations after the adjournment of this Conference, an understanding will be arrived at which will make any use of it absolutely unnecessary. I will appeal to the public opinion of Europe to range itself behind those who are to conduct these further negotiations so that, with as little delay as possible, they may terminate in agreements on limitation and reduction which can be fitted into the Treaty now open for signature.

It cannot be said too often that no one nation can take the way to disarmament. That can be done only by international agreement. The way to disarmament is not easy. To pass resolutions about it is good, but sooner or later we have to face numbers of tons, classes of vessels, size of fleets, and somebody must undergo the tiresome drudgery of settling complicated technical details. It has been our lot for many weeks now to be engaged upon that essential, but somewhat uninspiring, task. That is the only work that will bring us to the end desired.

We must be patient with each other so long as the quest for an agreement is being sincerely pursued. During these days, however, we have come to understand each other's difficulties, and in this matter understanding is the first stage to success. We have also become far more than fellow negotiators; we have become friends, and I believe we now, for the time being, go our several ways feeling



that the business which has brought us together is of the highest international import and relates to a cause which we wish to continue to serve.

I have to thank you all for both forbearance and helpfulness. You have all, delegates and experts alike, conspired to make my work easy and to overlook and overcome my faults. The Americans, headed by Mr. Stimson, with their enthusiasms, have been delightful colleagues, and have helped us over many a difficulty. The Japanese, led by Mr. Wakatsuki, have been stout defenders of their national needs, and yet loyal colleagues in the common cause which we have been trying to promote.

The French, with M. Tardieu and M. Briand at their head, in the midst of political distractions which for a time unfortunately deprived us of their presence, have given us unstinted assistance, and, even though their circumstances have forbidden them to come to complete agreement as yet, they have displayed the very best evidence that they are, heart and soul, as ever, enlisted in the cause of peace, and that they go from here only to continue negotiations determined to bring them to a successful ending.

The Italians, whose chief spokesman, Signor Grandi, is, unfortunately, unable to be with us owing to illness, have had a difficult part to play, and, though they were unable to engage in discussions upon actual figures, they have helped us in every other way, and they too, signing not a little of what has been done, go away determined to find ways which will ultimately produce an agreement between us all and join in the march forward towards European disarmament.

Around the British Government has been ranged a body of independent representatives of the Dominions and India who, whilst guarding with jealous care their independent position, have shown a sleepless anxiety to maintain that unity and counsel

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which was necessary for general agreement. Nor must I omit to thank that fine body of experts and secretaries whose knowledge and experience have been at our disposal and at all hours have been at our service. To one and all, as Chairman of the Conference, I tender my most grateful thanks.

Gentlemen, I believe we have done a work that will follow us. I believe that the London Naval Conference of 1930 has laid foundation stones upon which others will build with thankful hearts, and that we can suspend our labours for the present and bid each other good-bye carrying away with us not only a signed treaty, but the most precious of all factors in international peace—sterling goodwill and mutual friendly understanding and respect.

### 2. *The Treaty for the Limitation and Reduction of Naval Armament, London, April 22, 1930*

The President of the United States of America, the President of the French Republic, His Majesty the King of Great Britain, Ireland, and the British Dominions beyond the Seas, Emperor of India. His Majesty the King of Italy, and His Majesty the Emperor of Japan.

Desiring to prevent the dangers and reduce the burdens inherent in competitive armaments, and

Desiring to carry forward the work begun by the Washington Naval Conference and to facilitate the progressive realization of general limitation and reduction of armaments,

Have resolved to conclude a Treaty for the limitation and reduction, of naval armament, and have accordingly appointed as their Plenipotentiaries:

The President of the United States of America:<sup>1</sup>

The President of the French Republic:

<sup>1</sup> Names of representatives omitted.

His Majesty the King of Great Britain, Ireland, and the British Dominions beyond the Seas, Emperor of India:

for Great Britain and Northern Ireland and all parts of the British Empire which are not separate Members of the League of Nations:

for the Dominion of Canada:

for the Commonwealth of Australia:

for the Dominion of New Zealand:

for the Union of South Africa:

for the Irish Free State:

for India:

His Majesty the King of Italy:

His Majesty the Emperor of Japan:

Who, having communicated to one another their full powers, found in good and due form, have agreed as follows:

## PART I

### Article 1.

The High Contracting Parties agree not to exercise their rights to lay down the keels of capital ship replacement tonnage during the years 1931-6 inclusive as provided in Chapter II, Part 3 of the Treaty for the Limitation of Naval Armament signed between them at Washington on the 6th February, 1922, and referred to in the present Treaty as the Washington Treaty.

This provision is without prejudice to the disposition relating to the replacement of ships accidentally lost or destroyed contained in Chapter II, Part 3, Section I, paragraph (c) of the said Treaty.

France and Italy may, however, build the replacement tonnage which they were entitled to lay down in 1927 and 1929 in accordance with the provisions of the said Treaty.

PART IV

Article 22.

The following are accepted as established rules of International Law:<sup>1</sup>

(1) In their action with regard to merchant ships, submarines must conform to the rules of International Law to which surface vessels are subject.

(2) In particular, except in the case of persistent refusal to stop on being duly summoned, or of active resistance to visit or search, a warship, whether surface vessel or submarine, may not sink or render incapable of navigation a merchant vessel without having first placed passengers, crew, and ship's papers in a place of safety. For this purpose the ship's boats are not regarded as a place of safety unless the safety of the passengers and crew is assured, in the existing sea and weather conditions, by the proximity of land, or the presence of another vessel which is in a position to take them on board.

The High Contracting Parties invite all other Powers to express their assent to the above rules.

PART V

Article 23.

The present Treaty shall remain in force until the 31st December, 1936, subject to the following exceptions:

- (1) Part IV shall remain in force without limit of time;
- (2) the provisions of Articles 3, 4, and 5, and of Article 11 and Annex II to Part II so far as they relate to aircraft carriers, shall remain in force for the same period as the Washington Treaty.

<sup>1</sup> This Part supersedes the drastic rules of the Washington Conference of 1921-2 which never were finally made operative; see Wheaton, *International Law* (ed. Keith), ii. 868, 869.

Unless the High Contracting Parties should agree otherwise by reason of a more general agreement limiting naval armaments, to which they all become parties, they shall meet in conference in 1935 to frame a new treaty to replace and to carry out the purposes of the present Treaty, it being understood that none of the provisions of the present Treaty shall prejudice the attitude of any of the High Contracting Parties at the conference agreed to.

Article 24.

1. The present Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional methods and the ratifications shall be deposited at London as soon as possible. Certified copies of all the *procès-verbaux* of the deposit of ratifications will be transmitted to the Governments of all the High Contracting Parties.

2. As soon as the ratifications of the United States of America, of His Majesty the King of Great Britain, Ireland, and the British Dominions beyond the Seas, Emperor of India, in respect of each and all of the Members of the British Commonwealth of Nations as enumerated in the preamble of the present Treaty, and of His Majesty the Emperor of Japan have been deposited, the Treaty shall come into force in respect of the said High Contracting Parties.<sup>1</sup>

3. On the date of the coming into force referred to in the preceding paragraph, Parts I, II, IV, and V of the present Treaty will come into force in respect of the French Republic and the Kingdom of Italy if their ratifications have been deposited at that date; otherwise these Parts will come into

<sup>1</sup> December 31, 1930. The provision insists on the solidarity of the Empire in this matter as under the Treaty of 1922. The delay was due to the Irish Free State's inability to secure earlier legislative approval.

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force in respect of each of those Powers on the deposit of its ratification.

4. The rights and obligations resulting from Part III of the present Treaty are limited to the High Contracting Parties mentioned in paragraph 2 of this Article. The High Contracting Parties will agree as to the date on which, and the conditions under which, the obligations assumed under the said Part III by the High Contracting Parties mentioned in paragraph 2 of this Article will bind them in relation to France and Italy; such agreement will determine at the same time the corresponding obligations of France and Italy in relation to the other High Contracting Parties.

#### Article 25.

After the deposit of the ratifications of all the High Contracting Parties, His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland will communicate the provisions inserted in Part IV of the present Treaty to all Powers which are not signatories of the said Treaty, inviting them to accede thereto definitely and without limit of time.

Such accession shall be effected by a declaration addressed to His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland.

#### Article 26.

The present Treaty, of which the French and English texts are both authentic, shall remain deposited in the archives of His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland.

### XIII. THE IMPERIAL CONFERENCE, 1930

#### 1. *The System of Communication and Consultation in Relation to Foreign Affairs*

PREVIOUS Imperial Conferences have made a number of recommendations with regard to the communication of information and the system of consultation in relation to treaty negotiations and the conduct of foreign affairs generally. The main points can be summarized as follows:

(1) Any of His Majesty's Governments conducting negotiations should inform the other Governments of His Majesty in case they should be interested and give them the opportunity of expressing their views, if they think that their interests may be affected.

(2) Any of His Majesty's Governments on receiving such information, should if it desires to express any views, do so with reasonable promptitude.

(3) None of His Majesty's Governments can take any steps which might involve the other Governments of His Majesty in any active obligations without their definite assent.

The Conference desired to emphasize the importance of ensuring the effective operation of these arrangements. As regards the first two points, they made the following observations:

(i) The first point, namely, that of informing other Governments of negotiations, is of special importance in relation to treaty negotiations in order that any Government which feels that it is likely to be interested in negotiations conducted by another Government may have the earliest possible opportunity of expressing its views. The application of this is not, however, confined to treaty negotiations. It cannot be doubted that the fullest

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possible interchange of information between His Majesty's Governments in relation to all aspects of foreign affairs is of the greatest value to all the Governments concerned.

In considering this aspect of the matter, the Conference have taken note of the development since the Imperial Conference of 1926 of the system of appointment of diplomatic representatives of His Majesty representing in foreign countries the interests of different Members of the British Commonwealth. They feel that such appointments, furnish a most valuable opportunity for the interchange of information, not only between the representatives themselves but also between the respective Governments.

Attention is also drawn to the resolution quoted in Section VI [p. 389] of the Report of the Inter-Imperial Relations Committee of the Imperial Conference of 1926, with regard to the development of a system to supplement the present system of inter-communication through the official channel with reference not only to foreign affairs but to all matters of common concern. The Conference have heard with interest the account which was given of the liaison system adopted by His Majesty's Government in the Commonwealth of Australia, and recognized its value. Their attention has also been called to the action taken by His Majesty's Government in the United Kingdom in the appointment of representatives in Canada and the Union of South Africa.<sup>1</sup> They are impressed with the desirability of continuing to develop the system of personal contact between His Majesty's Governments, though, of course, they recognize that the precise arrangements to be adopted for securing this development are matters

<sup>1</sup> A High Commissioner was sent to Ottawa in 1928, and to the Union in 1931. In the latter case he was given charge, in lieu of the Governor-General, of Basutoland, Swaziland, Bechuanaland Protectorate, and of Imperial functions as to Southern Rhodesia. A High Commissioner to Australia was provided for in 1931.



for the consideration of the individual Governments with a view to securing a system which shall be appropriate to the particular circumstances of each Government.

(ii) As regards the second point, namely, that any of His Majesty's Governments desiring to express any views should express them with reasonable promptitude, it is clear that a negotiating Government cannot fail to be embarrassed in the conduct of negotiations if the observations of other Governments who consider that their interests may be affected are not received at the earliest possible stage in the negotiations. In the absence of comment the negotiating Government should, as indicated in the Report of the 1926 Conference, be entitled to assume that no objection will be raised to its proposed policy.

## *2. The Channel of Communication between Dominion Governments and Foreign Governments*

At the Imperial Conference of 1926 it was agreed that, in cases other than those where Dominion Ministers were accredited to the Heads of foreign States, it was desirable that the existing diplomatic channels should continue to be used, as between the Dominion Governments and foreign Governments, in matters of general and political concern.

While the Conference did not wish to suggest any variation in this practice, they felt that it was of great importance to secure that the machinery of diplomatic communication should be of a sufficiently elastic and flexible character. They appreciated that cases might arise, in which, for reasons of urgency, one of His Majesty's Governments in the Dominions might consider it desirable to communicate direct with one of His Majesty's Ambassadors or Ministers appointed on the advice of His Majesty's Government in the United Kingdom

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on a matter falling within the category mentioned. In such cases they recommended that the procedure just described should be followed. It would be understood that the communication sent to the Ambassador or Minister would indicate to him that, if practicable, he should, before taking any action, await a telegram from His Majesty's Government in the United Kingdom, with whom the Dominion Government concerned would simultaneously communicate.

As regards subjects not falling within the category of matters of general and political concern, the Conference felt that it would be to the general advantage if communications passed direct between His Majesty's Governments in the Dominions and the Ambassador or Minister concerned. It was thought that it would be of practical convenience to define, as far as possible, the matters falling within this arrangement; the definition would include such matters as, for example, the negotiation of commercial arrangements affecting exclusively a Dominion Government and a foreign Power, complimentary messages, invitations to non-political conferences, and requests for information of a technical or scientific character. If it appeared hereafter that the definition were not sufficiently exhaustive it could of course be added to at any time.

In making the above recommendations, it was understood that, in matters of the nature described in the preceding paragraph, cases might also arise in which His Majesty's Governments in the Dominions might find it convenient to adopt appropriate channels of communication other than that of diplomatic representatives.

The Conference were informed that His Majesty's Government in the United Kingdom were willing to issue the necessary instructions to the Ambassadors and Ministers concerned to proceed in accordance with the above recommendations.

### 3. *Arbitration and Disarmament*

In the sphere of foreign affairs, apart from the review of certain special questions of foreign policy, the main task before the Conference was the discussion of the means by which the Members of the British Commonwealth could best co-operate in promoting the policy of disarmament and world peace.

The Conference noted with pleasure the progress which had been made since the last Imperial Conference in this field and in particular the important steps taken in the conclusion of the Pact of Paris and the acceptance by all Members of the British Commonwealth of the Optional Clause of Article 36 of the Statute of the Permanent Court of International Justice. The Conference, having considered the provisions of the General Act for the Pacific Settlement of International Disputes, approved the general principles underlying the Act. The representatives of the United Kingdom, Canada, the Commonwealth of Australia, New Zealand, the Irish Free State, and India, intimated that it was proposed to commend the General Act to the appropriate authority with a view to accession on conditions mainly similar to those attached to their respective acceptances of the Optional Clause; in particular the reservation regarding questions which by international law fall within the domestic jurisdiction of the parties would be retained by those Members of the Commonwealth who had adopted it in accepting the Optional Clause, in view of the importance attached by many of His Majesty's Governments to certain matters, such as immigration, which are solely within their domestic jurisdiction. The representatives of the Union of South Africa intimated that His Majesty's Government in the Union were not opposed to the principle of the General Act but that the Act would be further examined by that

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Government before they could arrive at a final decision, as some time would be required for a study of certain questions involved.

The Conference further considered the proposals which had been made to bring the Covenant of the League of Nations into harmony with the Pact of Paris and reached the conclusion that the principle underlying these proposals is one which should receive the support of all the Governments represented at the Conference.<sup>1</sup>

The Conference also placed on record the view that the amendments to the Covenant which were drafted by the Sub-Committee appointed for this purpose by the First Committee at the Eleventh Assembly of the League of Nations should be recommended to the several Governments for acceptance. The Conference was further of opinion that the entry into force of these amendments should be made dependent upon the entry into force of a General Treaty for the Reduction and Limitation of Armaments.

The Conference desired to record its conviction that the future peace of the world depends upon the early adoption of some general scheme of disarmament by international agreement and that every effort should be made to convoke a General Disarmament Conference at an early date in order that the obligations accepted by all the Members of the League under Article 8 of the Covenant might be honoured without further delay.

The Conference considered the text of the draft of a Disarmament Convention drawn up by the Preparatory Commission and reached the conclusion, as the result of an exchange of views, that the principles underlying the draft Convention should be approved. The Conference was in general further

<sup>1</sup> The League Assembly in September 1931 decided that an effort should be made to achieve complete agreement during the Disarmament Conference of 1932. See below, p. 437.

satisfied that the provisions of the draft Convention, with certain proposed amendments, afforded an adequate basis for an effective system of disarmament.

The Conference took note of the deposit of ratifications of the London Naval Treaty, which took place while it was in session, and desired to record its satisfaction at the progress thereby achieved in the sphere of naval disarmament.

#### 4. *Defence*

As already mentioned, the great pressure of work in connexion with Inter-Imperial Relations and Economic questions rendered it impossible to arrange any plenary discussions on Imperial Defence.

At an early stage of the Conference, however, arrangements were made for the Chiefs of Staff of the three Services in the United Kingdom and representatives of the Services of the Dominions and India to meet together and discuss matters of common interest. The existing arrangements for consultation and co-operation (including questions of general defence such as the supply of war material and the co-ordination of defensive arrangements as well as the staff arrangements of the respective services), which have grown up as the result of past Imperial Conferences, were reviewed, and, where necessary, recommendations were submitted for their improvement in matters of detail.

In addition, meetings took place at the Admiralty, War Office, and Air Ministry at which questions of naval, military, and air defence respectively were examined from a more technical point of view.

#### *Naval Base at Singapore*

As a result of discussion between representatives of the United Kingdom, the Commonwealth of Australia, and New Zealand, it was recommended that the present policy of the ultimate establishment

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of a defended naval base at Singapore should be maintained and that the Jackson contract should be continued. It was, however, also recommended that, apart from the latter expenditure and such as will be required for the completion of the air base on the scale at present contemplated, the remaining expenditure, i.e. that required for completing the equipment of the docks and for defence works, should be postponed for the next five years, when the matter could be again reviewed in the light of relevant conditions then prevailing.

XIV. MEMORANDUM ON THE PROPOSED  
ACCESSION OF HIS MAJESTY'S GOVERN-  
MENT IN THE UNITED KINGDOM TO THE  
GENERAL ACT OF 1928 FOR THE PACIFIC  
SETTLEMENT OF INTERNATIONAL DIS-  
PUTES, FEBRUARY 23, 1931

THE signature by all the Members of the British Commonwealth of Nations of the Optional Clause,<sup>1</sup> which was followed last year by ratification on behalf of all His Majesty's Governments, created an important additional safeguard against war, and greatly reinforced the whole structure of peace. But, as I indicated when signing on behalf of His Majesty's Government in the United Kingdom, this was only 'the first step' towards a complete and organized system for the peaceful settlement of international disputes. The Optional Clause relates exclusively to 'justiciable disputes', that is to say, disputes relating to—(a) the interpretation of a treaty; (b) any question of international law; (c) the existence of any fact which, if established, would constitute a breach of an international obligation; (d) the nature or extent of the reparation to be made for the breach of an international obligation.

2. There remains unprovided for the field of 'non-justiciable' disputes; and it was to cover this ground, and to create the machinery, whereby all international disputes of whatever character should be capable of solution by pacific means, that the Ninth Assembly of the League of Nations elaborated and approved in 1928 the instrument known as the General Act.

It may, indeed, be truly said that the majority of possible disputes at the present day are justiciable, and only a minority non-justiciable, and, further, that, with the increase in the number of

<sup>1</sup> See p. 410, *ante*.

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treaties of all kinds and the growth of international law, the range of justiciable disputes is continually extending, and that of non-justiciable disputes correspondingly diminishing. None the less, even though it may be argued that the acceptance of the General Act is, for this reason, a less important step than was the acceptance of the Optional Clause, its importance lies in the fact that it does, by making definite provision for non-justiciable disputes, complete an organized system of 'all-in arbitration'.

5. The operative portion of this instrument consists of three chapters, dealing respectively with conciliation, judicial settlement, and arbitration. Although States may, if they prefer, accept only some of these chapters, it is necessary to accept them all if an ultimate settlement of all disputes by pacific means is to be assured.

The effect of accession to the whole of the General Act is as follows:

Justiciable disputes go, under Chapter II, to the Permanent Court of International Justice unless the parties agree to have recourse to a special arbitral tribunal or to a preliminary procedure of conciliation.<sup>1</sup>

Non-justiciable disputes go, under Chapter I of the General Act, to a permanent or special conciliation commission, composed of five members, one chosen by each of the parties to the dispute from among their respective nationals, and three appointed by agreement from among the nationals of third Powers. There are provisions for the appointment of these three members in the event of the parties failing to agree. If a settlement is not reached by this means, the dispute goes, under

<sup>1</sup> Acceptance of Chapter II has, therefore, the same effect as acceptance of the Optional Clause, subject to (i) the possibility of the parties availing themselves of the two alternative procedures mentioned above and (ii) a difference of wording, which is not considered to be material, between the definitions of justiciable disputes in the two instruments.



Chapter III, to an arbitral tribunal of five members, chosen in a similar manner to the members of the Conciliation Commission. The decision of this tribunal is binding on the parties.

The initial currency of the General Act is a period of five years from the first accessions. Since these took effect in 1929 the General Act will be binding upon those who now accede to it up to 1934, when it may be either continued in its present form, or revised in the light of experience and of changes in public opinion.

The signature of the Optional Clause was thus<sup>1</sup> a logical consequence of the acceptance of the Pact of Paris. Accession to the General Act is only a further and equally logical consequence. For, whereas the Optional Clause provided for a definite solution of disputes of a justiciable nature, accession to the General Act will provide a means of settlement of every class of dispute.

7. It is believed that for this reason alone the accession of His Majesty's Government in the United Kingdom to the General Act will be generally acceptable to public opinion in this country; but it may be well to draw attention to certain further important considerations.

The Covenant of the League refers in its preamble to obligations 'not to resort to war'. Efforts are now being made<sup>2</sup> to amend the Covenant so as to bring it into harmony with the Pact of Paris—that is, to remove from the Covenant the existing possibility of recourse to war in certain circumstances. If, as is to be hoped, these amendments are soon embodied in the Covenant, war between Members of the League will be totally excluded as a means of settling international disputes.

But international disputes cannot settle themselves;

<sup>1</sup> See p. 412, *ante*.

<sup>2</sup> See 'Miscellaneous No. 18 (1930)', Cmd. 3748, and p. 432, note, *ante*.

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the nations, whose difficulties cause disputes to arise, are organic and not static; and international relations would obviously become impossible in the absence of any alternative method to war for dealing with such disputes between sovereign States as are incapable of solution by normal diplomatic means. Such a method is provided by the General Act; and His Majesty's Government are confident that the necessity for its early acceptance by as many States as possible will be generally recognized.

It is the hope of His Majesty's Government in the United Kingdom that, as in the case of the Optional Clause, a clear lead by His Majesty's Governments in the various parts of the Commonwealth will encourage many other Governments to follow their example. It is also, they believe, important to observe that the more nations in general accept, and accustom themselves to, definite ideas of arbitration, conciliation, and judicial settlement, the brighter will be the prospects of securing an adequate measure of disarmament at the Conference which is to meet next year. Both these considerations point strongly to the desirability of acceding to the General Act without delay.

8. But though, in principle, the desirability of accession is clear, it is equally clear that His Majesty's Government in the United Kingdom can only accede on certain definite conditions. The conditions recommended will be found in Annex 2 to the present paper. They correspond closely to the reservations made by His Majesty's Government in the United Kingdom, and by others of His Majesty's Governments, at the time of their signature of the Optional Clause. The argument in favour of these reservations was set out in 'Miscellaneous No. 12 (1929)', Cmd. 3452, and need not be repeated here. But it may be pointed out that the condition, whereby the right is retained to bring

any dispute before the Council of the League of Nations, is even more necessary in the case of the General Act than in that of the Optional Clause, seeing that consideration by the Council is more likely to be suitable for a non-justiciable than for a justiciable dispute.

It will also be noted that, by the proposed terms of accession, the procedure of the General Act will only apply, so far as His Majesty's Government in the United Kingdom is concerned, to States Members of the League, and will not be applicable to disputes with another member of the British Commonwealth of Nations.

9. The time is past when His Majesty's Government in this country could make any new departure of this kind in foreign affairs without full consultation with His Majesty's Governments in the other parts of the Empire. On a question of such international importance as accession to the General Act, it was not only desirable but essential to obtain the views, and if possible the concurrence, of all the other members of the British Commonwealth of Nations. The Imperial Conference of 1930 provided an opportune occasion for such consultation.<sup>1</sup>

10. Having regard to the opinion thus expressed at the Conference, His Majesty's Government in the United Kingdom will invite the House of Commons<sup>2</sup> at an early date to approve their accession, in the knowledge that His Majesty's Governments in the Dominions and the Government of India are in agreement with their action, and in the belief that such action will make a further contribution to the peace and security of the world.

ARTHUR HENDERSON.

*Foreign Office, February 23, 1931.*

<sup>1</sup> See p. 431, *ante*.

<sup>2</sup> The necessary approval was duly accorded and accession notified at the Council meeting of May 21, when Mr. Henderson deposited also notifications for the Commonwealth of Australia, and New Zealand. The Canadian Parliament agreed to accession in June 1931 on the usual reservations.

ANNEX 2

*Terms of Proposed Accession by His Majesty's Government in the United Kingdom*

It is proposed that accession should be made subject to the following conditions:<sup>1</sup>

(1) That the following disputes are excluded from the procedure described in the General Act, including the procedure of conciliation:

(i) Disputes arising prior to the accession of His Majesty to the said General Act or relating to situations or facts prior to the said accession;

(ii) Disputes in regard to which the parties to the dispute have agreed or shall agree to have recourse to some other method of peaceful settlement;

(iii) Disputes between His Majesty's Government in the United Kingdom and the Government of any other Member of the League which is a member of the British Commonwealth of Nations, all of which disputes shall be settled in such manner as the parties have agreed or shall agree;

(iv) Disputes concerning questions which by international law are solely within the domestic jurisdiction of States; and

(v) Disputes with any party to the General Act who is not a Member of the League of Nations.

(2) That His Majesty reserves the right in relation to the disputes mentioned in Article 17 of the General Act to require that the procedure described in Chapter II of the said Act shall be suspended in respect of any dispute which has been submitted to and is under consideration by the Council of the League of Nations, provided that notice to suspend is given after the dispute has been submitted to the Council and is given within ten days of the notification of the initiation of the procedure, and provided also that such suspension shall be limited to a period of twelve months or such longer period as may be agreed by the parties to the dispute or determined

<sup>1</sup> The Irish Free State acceded unconditionally as in the case of the Optional Clause (p. 414, *ante*), denying the validity of the reservations of the United Kingdom and other Dominions; see Mr. McGilligan, *Dáil Éireann*, June 26, 1931.

by a decision of all the members of the Council other than the parties to the dispute.

(3)—(i) That, in the case of a dispute, not being a dispute mentioned in Article 17 of the General Act, which is brought before the Council of the League of Nations in accordance with the provisions of the Covenant, the procedure described in Chapter I of the General Act shall not be applied, and, if already commenced, shall be suspended, unless the Council determines that the said procedure shall be adopted.

(ii) That in the case of such a dispute the procedure described in Chapter III of the General Act shall not be applied unless the Council has failed to effect a settlement of the dispute within twelve months from the date on which it was first submitted to the Council, or, in a case where the procedure prescribed in Chapter I has been adopted without producing an agreement between the parties, within six months from the termination of the work of the Conciliation Commission. The Council may extend either of the above periods by a decision of all its members other than the parties to the dispute.

## XV. THE FORMS AND CHARACTER OF DOMINION DIPLOMATIC ACTIVITIES

### 1. *Full Powers to W. T. Cosgrave to sign the Treaty for the Renunciation of War, August 20, 1928*

GEORGE, by the Grace of God, of Great Britain, Ireland, and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, &c.

To all and singular to whom these Presents shall come, Greeting!

Whereas, for the better treating of and arranging of certain matters which are now in discussion, or which may come into discussion, between Us and other Powers and States, relative to the renunciation of war as an instrument of national policy, We have judged it expedient to invest a fit person with Full Power to conduct the said discussion on Our part, in respect of Our Irish Free State: Know ye, therefore, that We, reposing especial trust and confidence in the wisdom, loyalty, diligence, and circumspection of Our Trusty and Well-beloved William Thomas Cosgrave, Esquire, Doctor of Laws, member of the Parliament of Our Irish Free State, President of the Executive Council of Our Irish Free State, have named, made, constituted, and appointed, as We do by these presents name, make, constitute, and appoint him Our undoubted Commissioner, Procurator, and Plenipotentiary, in respect of Our Irish Free State; Giving to him all manner of Power and Authority to treat, adjust, and conclude with such Ministers, Commissioners, or Plenipotentiaries as may be vested with similar Power and Authority on the part of the aforesaid Powers and States any Treaty, Convention, or Agreement that may tend to the attainment of the above mentioned end, and to sign for Us, and in

Our name, in respect of Our Irish Free State everything so agreed upon and concluded, and to do and transact all such other matters as may appertain thereto, in as ample manner and form, and with equal force and efficacy, as We Ourselves could do, if personally present: Engaging and promising, upon Our Royal Word, that whatever things shall be so transacted, and concluded by Our said Commissioner, Procurator, and Plenipotentiary in respect of Our Irish Free State, shall, subject if necessary to Our ratification, be agreed to, acknowledged, and accepted by Us in the fullest manner, and that We will never suffer, either in the whole or in part, any person whatsoever to infringe the same, or act contrary thereto, as far as it lies in Our power.

In witness whereof We have caused Our Great Seal to be affixed to these Presents, which We have signed with Our Royal Hand.

Given at Our Court of St. James, the twentieth day of August, in the Year of Our Lord, One Thousand Nine Hundred and Twenty-eight and in the Nineteenth Year of Our reign.

L. S.

(Great Seal of the Realm.)

## 2. *Ratification of the Treaty, February 19, 1929*

George, by the Grace of God, of Great Britain, Ireland, and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, &c.

To all and singular to whom these Presents shall come, Greeting!

Whereas a treaty between Us and other Powers and States, providing for the renunciation of war as an instrument of national policy, was concluded and signed at Paris on the twenty-seventh day of August in the year of Our Lord One Thousand Nine

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Hundred and Twenty-eight by the Plenipotentiaries of Us and of the said Powers and States duly and respectively authorized for that purpose.

And Whereas the Dáil and Seanad of Our Irish Free State have approved of the said Treaty, which is word for word as follows. . . .

And Whereas the Executive Council of Our Irish Free State have advised Us to ratify the aforesaid Treaty in respect of Our Irish Free State.

We, having seen and considered the Treaty aforesaid, have approved, accepted, and confirmed the same in all and every one of its articles and clauses, as We do by these Presents approve, accept, confirm and ratify it in respect of Our Irish Free State for Ourselves, Our Heirs, and Successors: Engaging and Promising upon Our Royal Word that We will sincerely and faithfully perform and observe all and singular the things which are contained and expressed in the Treaty aforesaid, and that We will never suffer the same to be violated by any one, or transgressed in any manner, as far as lies in Our power.

For the greater testimony and validity of all which, We have caused Our Great Seal to be affixed to these Presents, which we have signed with Our Royal Hand.

Given at Our Court of St. James, the nineteenth day of February, in the Year of Our Lord, One Thousand Nine Hundred and Twenty-nine and in the Nineteenth Year of Our Reign.

Signed on behalf of His Majesty the King<sup>1</sup>

MARY R.  
EDWARD P.  
ALBERT.

<sup>1</sup> Only the royal members of those authorized to sign during the King's illness were signatories, this being insisted on by the Irish Free State; see Keith, *The Sovereignty of the British Dominions*, p. 251. An Irish seal is now used.



3. *Letter of Credence for the Envoy Extraordinary and Minister Plenipotentiary to the President of the United States, February 22, 1929*

George, by the Grace of God, of Great Britain, Ireland, and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, &c.

To the President of the United States of America, sendeth Greeting. Our Good Friend.

Being desirous of maintaining without interruption the representation in the United States of America of the interests of Our Irish Free State, We have made choice of Our Trusty and Well-beloved Michael MacWhite, Esquire, to reside with You in the character of Our Envoy Extraordinary and Minister Plenipotentiary for Our Irish Free State.

We request that You will give entire credence to all that Mr. MacWhite may represent to You in Our name, especially when he shall assure You of Our esteem and regard, and of Our hearty wishes for the welfare and prosperity of the United States of America.

And so We commend You to the protection of the Almighty.

Given at Our Court of St. James, the twenty-second day of February, in the Year of Our Lord One Thousand Nine Hundred and Twenty-nine, and in the Nineteenth Year of our Reign.

Your Good Friend,

Signed on behalf of His Majesty the King<sup>1</sup>

MARY R.  
EDWARD P.  
ALBERT.

<sup>1</sup> The envelope enclosing such letters will in future be sealed with the Irish Fob Seal.

4. *The British Ambassador, Berlin, to the Minister for Foreign Affairs of the Reich, June 9, 1929*

Your Excellency.

At the instance of His Majesty's Government in the Irish Free State, and under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, I have the honour to inform Your Excellency that His Majesty's Government in the Irish Free State have come to the conclusion that it is desirable that the handling of matters at Berlin relating to the Irish Free State should be confided to an Envoy Extraordinary and Minister Plenipotentiary accredited to the German Government.

2. Such a Minister would be accredited by His Majesty the King to the President of the German Republic, and he would be furnished with credentials which would enable him to take charge of all affairs relating to the Irish Free State.

He would be the ordinary channel of communication with the German Government on these matters. The arrangements proposed would not denote any departure from the principle of the diplomatic unity of the Empire, that is to say,<sup>1</sup> the principle of consultative co-operation amongst all His Majesty's Representatives, as amongst His Majesty's Governments themselves, in matters of common concern. The methods of dealing with matters which may arise concerning more than one of His Majesty's Governments would, therefore, be settled by consultation between the representatives of His Majesty's Governments concerned.

3. In proposing the establishment of an Irish Free State legation His Majesty's Government in the Irish Free State trust that it will promote the maintenance and development of cordial relations not only between Germany and the Irish Free State,

<sup>1</sup> Contrast the earlier statement on this point, p. 349, *ante*.

but also between Germany and the whole British Commonwealth of Nations.

*5. Letter of Credence for the Envoy Extraordinary and Minister Plenipotentiary of the United States to Canada, March 5, 1927<sup>1</sup>*

Calvin Coolidge, President of the United States of America.

To His Majesty George V, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, &c.,

Great and Good Friend:

I have conferred the rank of Envoy Extraordinary and Minister Plenipotentiary upon Mr. William Phillips, a distinguished citizen of the United States, with the special object of representing in the Dominion of Canada the interests of the United States of America. He is well informed of the desire of this Government to cultivate to the fullest extent the friendship which has so long existed between Your Majesty's Dominion of Canada and this country.

I, therefore, request Your Majesty to receive him favourably and to commend him to the officials of the Dominion of Canada in order that full credence may be given to what he shall say on the part of the United States of America. I have charged him to convey to you and to the government of the Dominion of Canada the best wishes of this Government for the prosperity of the British Empire.

May God have Your Majesty in His Wise Keeping.

Your good friend,

CALVIN COOLIDGE.

<sup>1</sup> This historic letter was presented to the Governor-General of Canada by the Envoy on June 1, 1927.

## XVI. DOMINION POLICY IN TREATY NEGOTIATION AS AFFECTING IMPERIAL UNITY

*1. Treaty of Commerce and Navigation between His Majesty in respect of the Union of South Africa and the President of the German Reich, with Protocol, Pretoria, September 1, 1928*

*[Ratifications exchanged at Berlin, June 11, 1929]*

HIS Majesty the King of the United Kingdom of Great Britain, Ireland, and the British Dominions beyond the Seas, Emperor of India, for and on behalf of the Union of South Africa, and the President of the German Reich, being desirous of further facilitating and extending the commercial relations already existing between the Union of South Africa and the German Reich, have resolved to conclude a treaty of commerce and navigation for that purpose and to that end, and have appointed their plenipotentiaries, that is to say:

His Majesty the King of the United Kingdom of Great Britain, Ireland, and the British Dominions beyond the Seas, Emperor of India; The Honourable Fredrik William Beyers, K.C., M.L.A., a Member of the Executive Council and Minister of Mines and Industries of the Union of South Africa;

The President of the German Reich: Herr Otto Sarnow, Ministerialrat in the German Ministry of Finance;

Who, having satisfied themselves as to their respective full powers, have agreed as follows:

### Article 1.

There shall be between the territories of the contracting parties reciprocal freedom of commerce and navigation.

The subjects or citizens of either of the contracting parties upon conforming themselves to the laws and regulations applicable generally to nationals,

shall have liberty, freely and securely to come, with their ships and cargoes, to all places and ports in the territories of the other to which subjects or citizens of that party are or may be permitted to come, and shall enjoy the same rights, privileges, liberties, favours, immunities, and exemptions in matters of commerce and navigation as are or may be enjoyed by subjects or citizens of that party.

Article 2.

The subjects or citizens of either of the contracting parties shall enjoy in the territories of the other, in respect of their persons, their property, rights, and interests, and in respect of commerce, industry, business, profession, occupation, or any other matter, in every way the same treatment and legal protection as the subjects or citizens of that party or of the most favoured nation, in as far as taxes, rates, customs, imposts, fees which are substantially taxes, and other similar charges are concerned.

Article 3.

The contracting parties agree that in all matters relating to commerce, navigation, and industry, any privilege, favour, or immunity which either of the parties has actually granted or may hereafter grant to the ships and subjects or citizens of any other state shall be extended simultaneously and unconditionally, without request and without compensation, to the ships and subjects or citizens of the other, it being their intention that the commerce, navigation, and industry of either of the parties shall be placed in all respects on the footing of the most favoured nation.

Article 8.

Any article produced or manufactured in the territories of either of the contracting parties, on importation into the territories of the other, shall not be subjected to other or higher duties or charges

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than those paid on the like articles produced or manufactured in any other country ; provided that in respect of the goods now specifically enumerated in the existing legislation of the Union of South Africa the German Reich may not claim the minimum rates or rebates which can only be granted on such goods if produced or manufactured within Great Britain and Northern Ireland and the British Dominions, Colonies, Possessions, or Protectorates and when imported therefrom for consumption within the Union nor such minimum rates or rebates as have actually been granted to Canada and New Zealand respectively in respect of the articles specifically mentioned in Schedule II, Parts II and IV, to Act No. 36 of 1925 of the Union of South Africa.

With regard to customs formalities any article produced or manufactured in the territory of either of the contracting parties when imported into the territory of the other party shall not be subjected to any treatment less favourable than that accorded to like articles produced, or manufactured in any other country.

#### Article 9.

No articles on exportation from the territories of either of the contracting parties to the territories of the other shall be subjected to other or higher duties or charges than those levied on the like articles on exportation to any other country.

The stipulations of the foregoing Treaty which relate to the treatment of subjects and citizens or ships and vessels of the contracting parties shall, as far as His Britannic Majesty is concerned, apply exclusively to subjects of His Majesty who are nationals of the Union of South Africa in terms of Act No. 40 of 1927 and to ships and vessels registered in the Union of South Africa.

This protocol constitutes an essential part of the Treaty of Commerce and Navigation signed this

day and shall come into force at the same time as this Treaty.

Done at Pretoria in duplicate in English, Afrikaans, and German texts, the 1st of September, 1928.

F. W. BEYERS.

O. SARNOW.

*2. Treaty of Commerce and Navigation between the Irish Free State and France, Dublin, June 23, 1931*

His Majesty the King of Great Britain, Ireland, and the British Dominions beyond the seas, Emperor of India, on behalf of the Irish Free State, and the President of the French Republic being desirous of placing the commercial relations between the two countries on a footing which is in keeping with the traditional friendship which unites them and with a view to strengthening still further these ties of friendship, have resolved to conclude a Treaty of Commerce and Navigation and to that end have appointed their plenipotentiaries, that is to say:

His Majesty the King of Great Britain, of Ireland, and the British Dominions beyond the seas, Emperor of India, on behalf of the Irish Free State:

Patrick McGilligan, Minister for External Affairs.

And the President of the French Republic;

Charles Hervé Alphand, Envoy Extraordinary and Minister Plenipotentiary of the French Republic in the Irish Free State, Officer of the Legion of Honour,

who, having communicated to each other their respective full powers, found in good and due form, have agreed as follows: "

Article I.

Products, natural or manufactured, originating in the Irish Free State shall enjoy, on importation into the Customs territory of France, the benefits

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of the minimum tariff and of the lowest rates of import duties and taxes at present in force or which may in future be substituted therefor, as well as in respect of the surtaxes or other increases which France has established or may at any time establish.

The grant of the minimum tariff implies most-favoured nation treatment.

### Article II.

Products, natural or manufactured, originating in the Customs territory of France shall enjoy in the Irish Free State the benefit of the lowest duties which the Irish Free State grants or may grant to the products of any other country in respect of all import duties and taxes and of all surtaxes and increases which may be applied to these duties.

### Article III.

No articles on exportation from the Customs territory of either of the High Contracting Parties to the Customs territory of the other shall be subjected to other or higher duties or charges than those levied on articles of the same kind on exportation to any other country.

### Article VII.

Nothing in the present Treaty shall affect the right of the Government of the Irish Free State to modify, maintain, or extend preferential treatment in the matter of Customs duties accorded only to States Members of the British Commonwealth of Nations.

### Protocol.

The French Government wishes to declare that it has signed this Treaty in consequence of the changes which have been brought about, in the 1930 Finance Act of the Irish Free State, in the Customs duties on wines. These changes have been noted with satisfaction, and in exchange the French



Government hereby declares its readiness to grant, in favour of whisky manufactured in the Irish Free State, a general exception from the law of 25th June, 1920, placing a prohibition on the entry into France of spirits (No. 174 of the French Customs list).

The High Contracting Parties declare their readiness to continue the conversations already entered upon for the purpose of securing the widest application to the terms of the second paragraph of Article XIV of the present Treaty.

PATRICK MCGILLIGAN.

ALPHAND.

*3. Provisions in British Treaties as to Application to the Dominions: Anglo-Roumanian Treaty, London, August 6, 1930*

Article 35.

The present Treaty may by mutual agreement be extended, with any modifications agreed upon, so as to apply between Roumania and any of His Britannic Majesty's self-governing Dominions (including any mandated territories administered by the Governments of such Dominions) or India, by means of an exchange of notes between the Roumanian Government and the Government of any such Dominion or of India.

After the expiry of a period of two and a half years from the coming into force of the present Treaty, either of the High Contracting Parties may, by giving six months' notice, terminate the application of the Treaty between Roumania and any territory to which it has been extended under the first paragraph of this Article.

Article 36.

So long as in any territory referred to in Articles 34 and 35, which is not bound by the present Treaty, goods produced or manufactured in Roumania are

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accorded treatment as favourable as that accorded to goods produced or manufactured in any other foreign country, goods produced or manufactured in such territory shall enjoy in Roumania completely and unconditionally the treatment of the most favoured foreign country.

His Majesty the King of Roumania shall, however, be entitled at any time, upon giving six months' notice in writing, to terminate the application of this Article in respect of any of His Britannic Majesty's self-governing Dominions or of India.

Article 37.

The present Treaty shall be ratified and the ratifications shall be exchanged at Bucharest as soon as possible. It shall come into force immediately on the exchange of ratifications, and shall be binding during a period of three years from the date of such exchange.

In case neither of the High Contracting Parties shall have given notice to the other six months before the expiration of the said period of three years of his intention to terminate the Treaty, it shall remain in force until the expiration of six months from the date on which notice of such intention is given.

In the absence of an express provision to that effect, a notice given under the second paragraph of this Article shall not affect the operation of the Treaty as between Roumania and any territory to which the Treaty may have been extended under the provisions of Article 35.

IN WITNESS whereof the above-mentioned plenipotentiaries have signed the present Treaty and have affixed thereto their seals.

Done in duplicate at London this 6th day of August, 1930, in both English and Roumanian, both texts being authentic.

(L.S.) WILLIAM GRAHAM. (L.S.) V. V. TILEA.

4. *Exchange of Notes between His Majesty's Government in the Irish Free State and the Roumanian Government in regard to Commercial Relations, Bucharest, October 1/27, 1930*

British Legation,  
Bucharest, October 1, 1930.

M. le Ministre,

At the instance of His Majesty's Government in the Irish Free State and under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, I have the honour to inform your Excellency that His Majesty's Government in the Irish Free State do not desire to take advantage of the accession clause of the Anglo-Roumanian Commercial Treaty.<sup>1</sup>

2. His Majesty's Government in the Irish Free State have requested that, in consequence<sup>2</sup> of Article 36 of the above-mentioned Treaty, the Roumanian Government may be notified to the effect that goods produced or manufactured in Roumania are in fact accorded on importation into the Irish Free State treatment as favourable as that accorded to goods produced or manufactured in any other most-favoured-nation country, and that, reciprocally, His Majesty's Government in the Irish Free State expect that goods produced or manufactured in the Irish Free State shall, on importation into Roumania, be accorded complete and unconditional most-favoured-nation treatment, subject, however, to the condition that nothing in this notification shall affect the right of His Majesty's Government in the Irish Free State to modify, maintain, or extend preferential treatment accorded to any State of the British Commonwealth of Nations.

I avail, &c.

MICHAEL PALATRET.

<sup>1</sup> No. 3. The Roumanian reply of October 27 concurs.

<sup>2</sup> Mr. McGilligan holds this assertion erroneous; see p. xxxix, ante.

## XVII. NATIONALITY AND NATIONAL FLAGS IN THE DOMINIONS

(ALL persons born within the British Dominions are British subjects with minimal exceptions, and persons naturalized within any part of those Dominions are British subjects therein and in most cases also, under the British Nationality and Status of Aliens Acts 1914-22, they are British subjects in every part of the Empire. Persons of British descent born outside the Empire are also in certain cases British subjects.<sup>1</sup> In addition to being British subjects certain persons have been defined to be Dominion citizens or nationals.)

I. Canada by Act of 1921 (c. 4) defined Canadian nationals as meaning:

(1) Any British subject who is a Canadian citizen within the meaning of the Immigration Act.

(2) The wife of a Canadian citizen as described above.

(3) Any person born out of Canada is a Canadian national provided that his father was a Canadian national at the time of that person's birth; or, with regard to persons born before the passing of the Act, any person whose father, at the time of such birth, possessed all the qualifications of a Canadian national as defined by the Act.

Canadian citizens are defined by Acts of 1910 and 1919 to mean (a) a person born in Canada who has not become an alien; (b) a British subject who has Canadian domicile; or (c) a person naturalized under the laws of Canada who has not subsequently become an alien or lost his Canadian domicile. Domicile is acquired by an immigrant after five years permanent residence, and may be lost by naturalized persons or British subjects who immi-

<sup>1</sup> See Dicey and Keith, *Conflict of Laws* (ed. 5), chap. iii.

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grate by a year's absence except under special circumstances.

II. Under Act No. 4 of 1927 Union nationals are:

(1) A person born in any part of South Africa included in the Union who is not an alien or a prohibited immigrant under any law relating to immigration.

(2) A British subject whose entry into any part of South Africa included in the Union was in accordance with any law governing at the time of such entry the immigration of persons into that part of South Africa and who has for a period of at least two years thereafter been continuously domiciled in the Union so long as he retains that domicile.

(3) A person domiciled in the Union, and not being a prohibited immigrant under any law relating to immigration who became a naturalized British subject under the laws of any part of South Africa included in the Union, and who has for a period of at least three years after entry into that part of South Africa been continuously domiciled in the Union, so long as he retains such domicile and does not become an alien;

(4) A person born outside any part of South Africa included in the Union whose father was a Union national at the time of such person's birth, or would have been a Union national if this Act had at the time of such person's birth been in force, and was not in the service of an enemy state; provided that nothing in this paragraph contained shall apply to any person who, if he entered or is found in the Union, would in terms of any law relating to immigration be a prohibited immigrant.

(5) The wife of a Union national shall be deemed to be a Union national, and the wife of a person who is not a Union national shall not be deemed to be a Union national, but she may make a declaration of retention in terms of Section 12 of the South

African Nationality Act when her husband ceases to be a Union national.

The Union Act like the Canadian Act makes provision for the renunciation of Union nationality by persons who are nationals of other parts of the Empire.

The Union Act further provides for a distinctive flag (s. 7):

The flags of the Union shall be (a) the Union Jack to denote the association of the Union with the other members of the group of nations constituting the British Commonwealth of Nations; and (b) the National Flag of which the design is set out in Section 8.

2. The Union Jack shall be flown with the National Flag from the Houses of Parliament and from the principal government buildings of the capitals of the Union and of the Provinces, at the Union ports, and on government offices abroad, and at such places in the Union as the Government may determine.

3. The Governor-General may by regulation fix the manner in which the flags may be flown on ships on the high seas or for special purposes or occasions.

The design of the flag is three horizontal stripes, orange, white, and blue, the three flags, Union Jack, the old Free State flag, and the Transvaal Vierkleur, occupying the central stripe.

III. The Irish Free State definition of citizen has been cited above;<sup>1</sup> it is admittedly imperfect<sup>2</sup> and is to be extended by legislation in due course.

It should be noted that the definition in the Constitution is sufficiently wide to include certain persons who might not be British subjects. This

<sup>1</sup> See p. 108, *ante*. There is also a national flag, adopted by executive order; Keith, *Responsible Government in the Dominions* (1928), II. 1031.

<sup>2</sup> Cf. *Bradfield v. Swanton*, [1931] Ir. R. 446.

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position is analogous to that in other Dominions where under their Acts naturalization is accorded to persons without their becoming entitled under the British Nationality and Status of Aliens Act 1914-22 to rank as British subjects when outside the Dominion in question. How far such persons should now be treated as British subjects in the United Kingdom is a matter to be decided by British legislation in the light of the discussions at the Imperial Conference above recorded.<sup>1</sup>

The Commonwealth of Australia, New Zealand, and Newfoundland have not provided for nationality or citizenship in a manner analogous to the enactments of Canada, the Union, or the Irish Free State. These Dominions have adopted for use on land flags based on the flags worn by their mercantile marine, which consist of the Union Jack with a Dominion badge.<sup>2</sup>

In the Irish Free State and in the Union of South Africa under the Franchise Laws Amendment Act, 1931, the franchise is confined to nationals of those Dominions but not so far in Canada.

<sup>1</sup> See pp. 194-6, 215, 216, above.

<sup>2</sup> See Keith, *op. cit.*, ii. 1031, and for Newfoundland the National Flag Act, 1931.

## XVIII. THE VALIDITY AND EFFECT OF THE IRISH TREATY, 1921

*1. Statement communicated to the Secretary of State for Dominion Affairs by the High Commissioner for the Irish Free State on March 22, 1932.*

1. The Oath is not mandatory in the Treaty.

2. We have an absolute right to modify our Constitution as the people desire.

3. The Constitution is the people's Constitution and anything affecting it appertains to our internal sovereignty and is a purely domestic matter.

4. But besides these legal and constitutional considerations there is another and paramount consideration more than sufficient in itself to make the Minister's decision final and irrevocable. The people have declared their will without ambiguity.

5. The abolition of the Oath was the principal and dominating issue before the electors. It has been the cause of all the strife and dissension in this country since the signing of the Treaty.

6. The people, and not merely those who supported the policy of the present Government, regard it as an intolerable burden, a relic of medievalism, a test imposed from outside under threat of immediate and terrible war.

7. The new Government have no desire whatever to be on unfriendly relations with Great Britain. Quite the contrary.

8. But the British Government must realize that real peace in Ireland is impossible so long as the full and free representation of the people in their Parliament is rendered impossible by a test of this character.

9. The Minister and his Government have the most sincere desire that relations between these two countries should be allowed to develop on normal



lines. And normal relations between our two islands should naturally be close and friendly. But there can be no normal relations between us so long as one side insists on imposing on the other a conscience test which has no parallel in treaty relationships between States.

And even if the British Government hold the view that the Oath is mandatory in the Treaty they must recognize that such a test and imposition on the conscience of the people is completely out of place in a political agreement between two countries.

2. *Secretary of State for Dominion Affairs to the Minister for External Affairs, Irish Free State, March 23, 1932.*

SIR,

I have the honour to inform you that His Majesty's Government in the United Kingdom have had under consideration the information which the High Commissioner for the Irish Free State yesterday communicated to me as to the intentions of the Irish Free State Government in regard to the Oath prescribed under Article 17 of the Irish Free State Constitution.

2. In brief, the High Commissioner stated that the views of the Irish Free State Government are that the Oath is not mandatory in the Treaty of 1921 and that the Irish Free State has an absolute right to modify its Constitution in this respect.

3. In the opinion of His Majesty's Government in the United Kingdom it is manifest that the Oath is an integral part of the Treaty made ten years ago between the two countries and hitherto honourably observed on both sides. They wish to make their standpoint on this question clear to His Majesty's Government in the Irish Free State beyond a possibility of doubt.

4. His Majesty's Government in the United Kingdom further understand from a statement made by

you yesterday in Dublin, though they have received no official communication on the point, that the Irish Free State Government propose to retain the land annuities accruing under the Irish Lands Acts, 1891-1909. These annuities are payments which the tenants of purchased estates make in order to repay the sums lent to them to buy their land. In the view of His Majesty's Government in the United Kingdom the Irish Free State Government are bound by the most formal and explicit undertaking to continue to pay the land annuities to the National Debt Commissioners, and the failure to do so would be a manifest violation of an engagement which is binding in law and in honour on the Irish Free State, whatever administration may be in power, in exactly the same way as the Treaty itself is binding on both countries.

I have, &c.

J. H. THOMAS.

3. *Minister for External Affairs, Irish Free State, to the Secretary of State for Dominion Affairs, April 5, 1932.*

SIR,

The Government of the Irish Free State has had under consideration the views of the British Government communicated to me in your dispatch No. 69 of 23rd March.

2. Whether the Oath was or was not 'an integral part of the Treaty made ten years ago' is not now the issue. The real issue is that the Oath is an intolerable burden to the people of this State and that they have declared in the most formal manner that they desire its instant removal.

3. The suggestion in your dispatch that the Government of the Irish Free State contemplates acting dishonourably cannot in justice be let pass. The pages of the history of the relations between Great Britain and Ireland are indeed stained by

many breaches of faith, but I must remind you the guilty party has not been Ireland.

4. In justice also I must point out that the observance of the agreement of 1921 has involved no parity of sacrifice as between Great Britain and Ireland. This agreement gave effect to what was the will of the British Government. It was on the other hand directly opposed to the will of the Irish people and was submitted to by them only under the threat of immediate and terrible war. Since it was signed it has cost Britain nothing. In fact Britain's prestige throughout the world has been considerably enhanced by the belief, carefully fostered, that Ireland had at last been set free and the national aspirations of her people fully satisfied. For Ireland, however, this agreement has meant the consummation of the outrage of Partition, and the alienation of the most sacred part of our national territory with all the cultural and material loss that this unnatural separation entails.

British maintenance parties are still in occupation in some of our principal ports, even in the area of the Free State. Our coastal defence is still retained in British hands. Britain claims the right in times of war or strained relations with a foreign power to make demands upon Ireland which if granted will make our right to neutrality a mockery.<sup>1</sup>

This agreement divided the people of Ireland into two hostile camps, those who deemed it a duty to resist, facing the consequences, and those who deemed it prudent in the national interest temporarily to submit, the latter being placed in the no less cruel position of having apparently to hold Ireland for England with 'an economy of English lives', to quote from the late Lord Birkenhead's famous exposition of the policy in the House of Lords.

To England this agreement gave peace and added

See pp. 78, 82, and xxxix, above.

prestige. In Ireland it raised brother's hand against brother, gave us ten years of blood and tears, and besmirched the name of Ireland wherever a foul propaganda has been able to misrepresent us.

During these ten years, moreover, there has been extracted from us, though in part only as a consequence of the agreement, a financial tribute which, relatively to population, puts a greater burden on the people of the Irish Free State than the burden of the war reparation payments on the people of Germany, and, relatively to taxable capacity, a burden ten times as heavy as the burden on the people of Britain of their debt payments to the United States of America.

5. But, as I have already indicated, we are dealing at the moment with the much narrower issue, whether an oath is or is not to be imposed on members elected to sit in the Parliament of the Free State. The Government of the Irish Free State must maintain that this is a matter of purely domestic concern. The elimination of the Oath, and the removal of the Articles of the Constitution necessary for that purpose, is a measure required for the peace, order, and good government of the State. The competence of the legislature of the Irish Free State to pass such a measure is not open to question and has been expressly recognized by the British legislature itself.<sup>1</sup> It is the intention of my Government, therefore, to introduce immediately on the reassembly of Parliament a Bill for the removal of Article 17 of the Constitution, and for such consequential changes as may be required to make the removal effective.

6. With regard to the Land Annuities: my Government will be obliged if you will state what is the 'formal and explicit undertaking to continue to pay

<sup>1</sup> This is presumably a reference to the defeat of the Amendment to the Statute of Westminster referred to above, p. 302, n. 1. See also Sir T. Inskip's remarks at pp. 289, 290.

the Land Annuities to the National Debt Commissioners', to which you make reference in your dispatch. The Government of the Irish Free State is not aware of any such undertaking, but the British Government can rest assured that any just and lawful claims of Great Britain, or of any creditor of the Irish Free State, will be scrupulously honoured by its Government.

7. In conclusion, may I express my regret that in the statement conveying to the House of Commons the information given you by our High Commissioner that part of his message was omitted which assured your Government of the desire of the Government of the Irish Free State that the relations between the peoples of our respective countries should be friendly. These friendly relations cannot be established on pretence, but they can be established on the solid foundation of mutual respect and common interest, and they would long ago have been thus established had the forces that tend to bring us together not been interfered with by the attempts of one country to dominate the other.

I have, &c.,

EAMON DE VALERA.

4. *Secretary of State for Dominion Affairs to the Minister for External Affairs, Irish Free State, April 9, 1932.*

SIR,

His Majesty's Government in the United Kingdom have received your dispatch No. 59 of the 5th April,<sup>1</sup> and have read its terms with deep regret.

2. The views expressed in your dispatch go far beyond the issues originally raised, which were—the relationship to the Treaty Settlement of 1921 of the provisions of Article 17 of the Irish Free State Constitution dealing with the Parliamentary Oath of Allegiance, and the question of the Land

<sup>1</sup> No. 3, above.

Annuities. The terms of the dispatch make it clear that these points are but a part of a far wider issue, and that what is actually raised is nothing less than a repudiation of the settlement of 1921 as a whole.

3. His Majesty's Government in the United Kingdom could certainly not accept the sweeping statement in paragraph 3 of your dispatch, but they feel that nothing is to be gained by reviving the unhappy memories of a bygone past. His Majesty's Government in the United Kingdom entered into the 1921 Settlement with the single desire that it should end the long period of bitterness between the two countries and it is their belief that the Settlement has brought a measure of peace and contentment which could not have been reached by any other means. Further, as the direct result of that Settlement, the Irish Free State has participated in and contributed to the notable constitutional developments of the last few years, whereby the position of the Dominions as equal Members with the United Kingdom of the British Commonwealth of Nations under the Crown, has been defined and made clear to the world.

4. It is true that the 1921 Settlement did not result in the establishment of a united Ireland, but the Treaty itself made the necessary provision for the union at that time of the two parts of Ireland if both had then been ready to accept it. As to the future, His Majesty's Government in the United Kingdom feel it sufficient to state that, in their opinion, there can be no conceivable hope for the establishment of a united Ireland except on the basis that its allegiance to the Crown and its membership of the British Commonwealth will continue unimpaired.<sup>1</sup>

<sup>1</sup> Assurances have been given to Northern Ireland that the British Government does not contemplate any change of her status save with her consent.

5. As regards the expressed determination of His Majesty's Government in the Irish Free State to introduce a Bill immediately for the removal of Article 17 of the Constitution, and for such consequential changes as may be required to make the removal effective, His Majesty's Government in the United Kingdom adhere absolutely to the view stated in my dispatch No. 69 of 23rd March that the Oath is an integral part of the Treaty Settlement. His Majesty's Government in the United Kingdom have publicly indicated on many occasions in the most formal and emphatic manner, that they stand absolutely by the Treaty Settlement and to this position they most firmly adhere.

6. With regard to the Land Annuities, His Majesty's Government in the United Kingdom are at a loss to understand the statement that your Government are not aware of any such 'formal and explicit undertaking' as was referred to in my dispatch of the 23rd March.

In the first place His Majesty's Government in the United Kingdom consider that, in order to avoid misunderstanding, it is desirable to place on record the origin and nature of the Irish Land Annuities. These are not payments from Government to Government. In principle the main transaction is not one between the two Governments at all, but between the Irish tenant-purchaser and the holder of the Land Stock which is, of course, held both in Great Britain and in the Irish Free State. The position is that the annuities are collected by the Irish Free State Government from the tenant-purchasers and are distributed through the National Debt Commissioners to the holders of the Stock. The Irish Land Annuities are therefore in effect payments on the instalment system by the Irish tenant for the land which he has bought, which pass through the hands both of the Irish Free State Finance Ministry and of the National Debt

Commissioners, and are ultimately received by the holder of Irish Land Stock.

7. Such is the nature of the Land Annuities. The formal and explicit undertakings referred to in my dispatch of the 23rd March are as follows:

On the 12th February, 1923, a Financial Agreement was signed on behalf of the British Government and on behalf of the Government of the Irish Free State, which, *inter alia*, laid down the policy to be pursued in regard to completed and pending agreements for the purchase of land in the Irish Free State. The first two paragraphs of the Agreement read as follows:

'1. The Free State Government undertake to pay at agreed intervals to the appropriate fund the full amount of the annuities accruing due from time to time, making themselves responsible for the actual collection from the tenant-purchaser.

'2. The security for such payments shall be primarily a Free State guarantee fund similar to that under existing legislation, and, secondarily, the central fund of the Irish Free State.'

This undertaking was confirmed in the 'Heads of the Ultimate Financial Settlement between the British Government and the Government of the Irish Free State' which was signed on behalf of the British Government and on behalf of the Government of the Irish Free State, on the 19th March, 1926, and discussed in Dáil Éireann on the 8th December, 1926.

The first Head of this Settlement reads as follows:

'The Government of the Irish Free State undertake to pay to the British Government at agreed intervals the full amount of the annuities accruing due from time to time under the Irish Land Acts, 1891-1909, without any deduction whatsoever whether on account of Income Tax or otherwise.'

As stated in my dispatch of 23rd March, His Majesty's Government in the United Kingdom



regard undertakings of this character as binding in law and honour on the Irish Free State, whatever administration may be in power, in exactly the same way as the Treaty itself is binding on both countries.

8. I would state in conclusion that it is the sincere hope and desire of His Majesty's Government in the United Kingdom that friendly relations between the peoples of the United Kingdom and the Irish Free State should continue. But in their view those relations cannot but be impaired by any failure in the complete fulfilment of obligations deliberately undertaken.

I have, &c.,

J. H. THOMAS.

*5. Constitution (Removal of Oath) Bill, 1932, of Irish Free State.*

An Act to remove the obligation now imposed by law on members of the Oireachtas and Ministers who are not members of the Executive Council to take an oath, and for that purpose to amend the Constitution and also the Constitution of the Irish Free State (Saorstát Éireann) Act, 1922.

Be it enacted by the Oireachtas of Saorstát Éireann as follows:

1. The Constitution shall be and is hereby amended as follows, that is to say:

- (a) by the deletion of Article 17<sup>1</sup> thereof; and
- (b) by the deletion of the words 'and shall comply with the provisions of Article 17 of this Constitution' now contained in Article 55<sup>2</sup> thereof.

2. Section 2<sup>3</sup> of the Constitution of the Irish Free

<sup>1</sup> See p. 111, above.

<sup>2</sup> This Article deals with Ministers not members of the Executive Council, who are now normally not appointed; see p. 115, n. 3.

<sup>3</sup> See pp. 105, 107, above.

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State (Saorstát Eireann) Act, 1922 (No. 1 of 1922), is hereby repealed.<sup>1</sup>

3. Article 50 of the Constitution shall be and is hereby amended by the deletion of the words 'within the terms of the Scheduled Treaty' now contained therein.

4. This Act may be cited as the Constitution (Removal of Oath) Act, 1932.

<sup>1</sup> This and the following clause are necessary to render operative clause 1. But the legality of these clauses is doubtful, as the Constitution given to the Free State by the Constituent Assembly does not authorize changes save within the terms of the Treaty (p. 114) and makes the Constitution-subordinate to the Treaty (p. 105). On April 26, 1932, Mr. Thomas stated that the British Government regarded the Irish position as involving a repudiation of the Treaty. The Bill passed the Dáil on May 19, by 8 votes, and on May 20 Mr. Thomas pointed out that the issue was one of sanctity of agreements, and that it would be futile to make an agreement on commercial relations at Ottawa, if existing compacts were violated.

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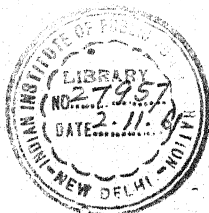
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